# Racial and Identity Profiling Advisory Board

## ANNUAL REPORT 2019

January 1, 2019

**RACIAL AND IDENTITY PROFILING ADVISORY (RIPA) BOARD**

**DRAFT REPORT – PENDING EDITING AND REVIEW 11/27/2018**
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**ANDREA GUERRERO**, *(Co-Chair)* Executive Director, Alliance San Diego; *Appointed by the Speaker of the Assembly*

**SHERIFF DAVID ROBINSON**, (*Co-Chair)* Sheriff, Kings County Sheriff's Office; *Designee of the President of California State Sheriffs' Association*

**MICAH ALI**, Vice President, Compton Unified School District Board of Trustees; *Appointed by the President Pro Tempore of the Senate*

**OSCAR BOBROW**, Chief Deputy Public Defender, Solano County; *Designee of the California Public Defenders Association*

**SANDRA C. BROWN**, Lieutenant (ret.), Palo Alto Police Department; *Appointed by the President Pro Tempore of the Senate*

**PASTOR J. EDGAR BOYD**, Pastor, First African Methodist Episcopal Church of Los Angeles (FAME); *Appointed by the Attorney General of California*

**SAHAR DURALI**, Directing Attorney, California Rural Legal Assistance, Inc.; *Appointed by the Attorney General of California*

**DR. JENNIFER EBERHARDT**, Professor of Psychology and Morris M. Doyle Centennial Professor of Public Policy, Stanford University; Co-Director of Stanford SPARQ (Social Psychological Answers to Real-world Questions; *Appointed by the Attorney General of California (Term: July 2016-July 2018)*

**ALEX JOHNSON**, Managing Director, Californians for Safety and Justice; *Appointed by the Governor of California (Term: July 2016-June 2018)*

**HONORABLE ALICE LYTLE**, Retired Judge, Sacramento County Superior Court; *Appointed by the Governor of California*

**BRIAN R. MARVEL**, President-Elect, Peace Officers Research Association of California (PORAC); *Designee of President of PORAC (Term: Nov. 2017 – Present)*

**MARIANA MARROQUIN**, Program Manager, Los Angeles LGBT Center's Anti-Violence Project; *Appointed by the Attorney General of California*

**REVEREND BEN MCBRIDE**, Co-Director, PICO California; Founder, Empower Initiative; *Appointed by the Attorney General of California (Board Co-Chair through September 2018)*

**CHIEF EDWARD MEDRANO**, President, California Police Chiefs Association; Chief, Gardena Police Department, *Designated by Assembly Bill 953 (Term: July 2016-March 2018; Board Co-Chair through March 2018)*

**DOUGLAS ODEN**, Senior Litigation Attorney, Law Offices of Oden & Greene; *Appointed by the Speaker of the Assembly*

**ANGELA SIERRA,** Chief Assistant Attorney General, California Department of Justice; *Designee of the Attorney General of California*

**TIMOTHY P. SILARD**, President, Rosenberg Foundation; *Appointed by the Attorney General of California*

**COMMISSIONER WARREN STANLEY**, Acting Commissioner, California Highway Patrol; *Designated by Assembly Bill 953 (Term: Sept. 2017 – Present)*

**CHIEF DAVID SWING,** President, California Police Chiefs Association; Chief, Morgan Hill Police Department, *Designated by Assembly Bill 953 (Term: March 2018 - Present)*

**TIMOTHY WALKER**, Senior, San Francisco State University; Mentor, Community Coalition, Los Angeles; *Appointed by the Attorney General of California*

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**Editors**

*California Department of Justice Civil Rights Enforcement Section*

**Kelsey S. Geiser**, Associate Governmental Program Analyst
**Catherine Z. Ysrael**, Deputy Attorney General

*California Department of Justice California Justice Information Services Division (CJIS)*

**Dr. Jannie Scott**, Research Analyst II, Research Center
**Dr. Daniel Tapia-Jimenez,** Research Associate, Research Center
**Kevin Walker**, Research Analyst II, Research Center

**Project Supervisors**

**Nancy A. Beninati**, Supervising Deputy Attorney General, Civil Rights Enforcement Section
**Dr. Randie C. Chance**, Director, Research Center
**Jenny Reich**, Director, Bureau of Criminal Identification and Investigative Services, CJIS

**Additional Editors and Contributors**

**Domonique C. Alcaraz,** Honors Deputy Attorney General, Civil Rights Enforcement Section
**Erin Choi, Program,** Manager**,** Client Services Program, CJIS
**Kelli Evans**, Special Assistant Attorney General, Executive Office
**Shannon Hovis,** Research Analyst II, Civil Rights Enforcement Section
**Charles Hwu,** Data Processing Manager, Application Development Bureau, CJIS
**Audra Opdyke,** Assistant Director, Bureau of Criminal Identification and Investigative Services (CJIS)
**Evelyn Reynoso,** Research Analyst I, Research Center

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# Executive Summary

***To Be Added***

# Introduction

The Racial and Identity Profiling Advisory Board ("Board") was created as the result of the Racial and Identity Profiling Act of 2015 (RIPA) and tasked with the ambitious charge of eliminating racial and identity profiling and improving diversity and racial and identity sensitivity in law enforcement.[1] The Board, which is required to meet at least three times a year, is composed of 18 members representing a wide range of sectors and expertise, including law enforcement, civil and human rights, and academia.

The Board's mission is enhanced by the diverse perspectives and backgrounds of its members, as well as by the vibrant discourse brought to Board meetings and subcommittees by members of the public and the law enforcement community. Together, the Board and these stakeholders share the goal of improving law enforcement-community relations, trust, and public safety in California through collaboration, transparency, and accountability.

Since its inception, the Board has been actively engaged in furthering this mission through engagement with the community at robust Board and subcommittee meetings, through consultation with the California Department of Justice ("Department") during the development of regulations drafted by the Department to implement RIPA, through direct work with the Commission on Peace Officer Standards and Training (POST) on its trainings pertaining to racial and identity profiling, and through the release of its inaugural report on January 1, 2018.

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As mandated by RIPA, the Board will annually release a report that will include detailed findings on the past and current status of racial and identity profiling in law enforcement as well as policy recommendations for eliminating profiling.[2] RIPA requires each annual report to include:

> An analysis of law enforcement data regarding stops by its officers and civilian complaints against officers;
> An analysis of the law enforcement training on racial and cultural differences discussed in Penal Code section 13519.4;
> A review and analysis of racial and identity profiling policies and practices across geographic areas in California, working in partnership with state and local law enforcement agencies; and
> Evidence-based research on intentional and implicit biases, and law enforcement stop, search, and seizure tactics.[3]

[1] Pen. Code, § 13519.4, subd. (j)(1).
[2] Pen. Code, § 13519.4, subd. (j)(3)(E).
[3] Pen. Code, § 13519.4, subd. (j)(3).

RIPA also requires the Board to consult with POST regarding its trainings on racial and cultural differences.

The creation of the Board is only one of several changes to the law under RIPA and a subsequent bill, AB 1518, which amended RIPA to additionally mandate:[4]

> The majority of California's law enforcement agencies to collect information on stops made by their officers, and to report this information to the Department; it also tasked the Department with writing the regulations to implement this data collection, in consultation with the Board and other stakeholders;[5]
> The stop data collected to be made available to the public and that the personal information of the person stopped and the unique identifying information of the officer is protected from disclosure;
> Several changes to the civilian complaint data required to be reported to and published by the Department;[6]
> The definition of racial profiling be expanded to include "identity profiling" and specifically provides that the consideration of a person's personal characteristics cannot be a basis for deciding who to stop or how to treat a person who has been stopped, except when relying on a specific suspect description;[7] and
> Various changes to the requirements of law enforcement's racial and cultural diversity training be made.[8]

RIPA requires the majority of California's law enforcement agencies to collect information on all stops by their officers, excluding stops by custodial officers and those that take place in a custodial setting. A "stop" is defined as any detention or search, including consensual searches.[9]

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Significantly, agencies with 1,000 or more officers began collecting data on July 1, 2018, and are required to submit this data to the Department by April 1, 2019. These agencies, the eight largest in the state, include the California Highway Patrol, Los Angeles Police Department, Los Angeles Sheriff's Office, Riverside Sheriff's Office, San Bernardino Sheriff's Office, San Diego Sheriff's Office, San Diego Police Department, and the San Francisco Police Department.

This year's report builds on the discussion in the Board's 2018 report regarding a baseline understanding of racial and identity profiling and what law enforcement agencies are doing to prevent and address it. This report does not include data regarding stops, because the state's largest law enforcement agencies only began collecting this information on July 1, 2018, and are not required to submit this data to the Department until April 1, 2019.[10] The Board will not analyze stop data in its reports until it has access to a full set of annual data starting in April of 2019.

[4] Assem. Bill No. 1518 (2017-2018 Reg. Sess.) § 1-2.
[5] Gov. Code, § 12525.2, subds. (a), (e).
[6] Pen. Code, § 13012.
[7] Pen. Code, § 13519.4, subd. (e).
[8] Pen. Code, § 13519.4, subd. (h).
[9] Gov. Code, § 12525.5, subd. (g)(2).
[10] For additional detail on the collection and reporting of stop data, see the "Stop Data" section of the report.

This report seeks to enhance the transparency of the stop data collection process by providing the public with detailed information on how the data is collected and submitted and how the Department and law enforcement agencies ensure the integrity of this data. This report also suggests specific policies that can be incorporated by law enforcement agencies into their policies, procedures, and trainings related to the elimination of racial and identity profiling across the state.

Specifically, this report: 1) provides best practice recommendations for agencies in drafting policies, procedures, and trainings regarding civilian complaints, and racial and identity profiling 2) analyzes the civilian complaint data submitted to the Department in 2017; 3) explores how to address the potential for bias when officers respond to calls for service; 4) analyzes the use of force data submitted to the Department in 2017; 5) summarizes the information that law enforcement agencies must collect and report on each stop, and how agencies and the Department are ensuring the integrity of this data; and 6) highlights methodologies that the Board may wish to use in analyzing data once it is submitted to the Department.[11] The report also offers recommendations and a vision for work the Board intends to pursue in future reports.[12]

As agencies begin submitting their data to the Department over the next several years, the Board, law enforcement, and other stakeholders will have the opportunity to analyze stop and complaint data by agency, together with agencies' policies, procedures and trainings. It is the hope that this analysis will help identify any unjustified disparities in law enforcement interactions with the public, and encourage law enforcement agencies, policy makes and community members alike to collaborate to develop solutions. Future reports will continue to provide recommendations that may be helpful in preventing or reducing racial and identity profiling.

The Board understands that success will only truly occur if all stakeholders are engaged to work collaboratively and constructively. It is in this spirit that the Board, comprising professionals of diverse backgrounds and perspectives, comes to the table and offers solutions to move law enforcement-community relations forward.

## Best Practice Recommendations[13]

In its 2018 report, the Board surveyed agencies throughout the State of California regarding the policies, procedures, and trainings they have in place to address racial and identity profiling. The results of that survey, while only able to represent those who responded, highlighted that agencies approach this topic in a highly variable manner. To help address these inconsistencies, the Board has reviewed existing evidence-based best practices for policies, procedures, and trainings devoted to preventing racial and identity profiling in policing. As a result of these reviews, the Board has compiled best practices for law enforcement agencies to consider and implement where appropriate to help prevent and address profiling if and when it occurs in

[11] The Board decided to include recommendations related to use of force because of its inherent relationship to police stop and search practices. Use of force incidents occur during or after stops or attempted stops and such data must be included in RIPA stop data reports.

[12] Appendix A of this report also contains a summary of legislation enacted in 2018 related to police accountability.

[13] Drafting note: Citations for all best practices are pending.

policing. Specifically, the Board has created best practice lists for civilian complaint policies and procedures, bias-free policing policies, and trainings related to racial and identity profiling. These best practices can be found throughout the body of the report as well as compiled in Appendix B.

The Board began its research into best practices by reviewing the governing law on the prohibitions related to racial and identity profiling. RIPA expressly states "racial or identity profiling is a practice that presents a great danger to the fundamental principles of our Constitution and a democratic society. It is abhorrent and cannot be tolerated."[14] The legislation expressly prohibits racial and identity profiling as defined as "the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability in deciding which persons to subject to a stop or in deciding upon the scope or substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in a specific suspect description."[15] Further, racial profiling is unlawful, violating the fundamental right of equal protection under the law guaranteed by the Fourteenth Amendment of the Constitution of the United States and Article I, Section 7 of the California Constitution. Along with this right to equal protection is the fundamental right to be free from unreasonable searches and seizures by government agents as guaranteed by the Fourth Amendment.[16]

In conducting its literature review on best practices for bias-free policing and related policies, the Board focused on identifying consistent standards across a range of relevant academic, governmental, and non-profit organizations that have expertise in this area. Since 2009, the Civil Rights Division of the United States Department of Justice (U.S. DOJ) has conducted investigations or reached reform agreements with 15 police departments and sheriff's offices throughout the country (two of which are California agencies), aimed at improving bias-free policing policies in law enforcement agencies and implementing procedural justice reforms. Many of these investigations and agreements contain similar policy recommendations, several of which have also been advocated by human and civil rights organizations and researchers who have analyzed policies relating of racial and identity profiling. The below list of best practices represents an accumulation of best practices identified by the U.S. DOJ in addition to information sourced from other relevant empirical research done by relevant organizations such as the Police Executive Research Forum (PERF),[17] the International Association of Chiefs of Police's (IACP),[18] the Vera Institute,[19] Fair and Impartial Policing[20], and Stanford Social Psychological Answers to Real World Questions (SPARQ)[21] among others.

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[14] Pen. Code, § 13519.4, section 4 subds. (d) (2).

[15] Pen. Code, § 13519.4, section 4 subd. (5) (e).

[16] 4th Amendment

[17] Police Executive Research Forum

[18] International Association of Chiefs of Police, Body-Worn Cameras Model Policy (2014), Alexandria, Virginia: International Association of Chiefs of Police.

International Association of Chiefs of Police, Body-Worn Cameras Concepts and Issues Paper (2014), Alexandria, Virginia: International Association of Chiefs of Police.

[19] The Vera Institute

[20] Fridell, Lorie A. *Producing Bias-Free Policing: A Science-Based Approach*

[21] Stanford Social Psychological Answers to Real World Questions, Strategies for Change: Research



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It is important to note that in providing the best practice lists, the Board advises that these are general recommendations, created with an eye towards achieving its goal of eliminating racial and identity profiling in policing, and are not narrow in scope. These lists are by no means exhaustive. Rather, these lists represent best practice recommendations that have appeared in numerous consent decrees and scholarly studies regarding policies on and related to bias-free policing. Each individual law enforcement agency should review its current policies, procedures, and trainings to determine which of the following recommendations fit best within its organization.

It is the Board's hope that this resource will assist law enforcement agencies, policymakers, and community members in developing, assessing and implementing bias-free policing policies, procedures, and trainings. The Board understands that the amount of funding and resources available to implement these recommendations varies depending on the agency; however, the Board encourages all agencies to consider these recommendations and adapt them to fit the agency's needs. It is the hope that the State's residents and the law enforcement agencies will all benefit from this effort to standardize law enforcement's approach to preventing racial and identity profiling in California.

As the Board enters its third year, it applauds the efforts by law enforcement agencies and stakeholders to improve law enforcement-community relationships and take steps toward eliminating racial and identity profiling in policing. Through the data to be collected as part of AB 953, and the work of the Board together with efforts of law enforcement agencies and communities across the state, California has an opportunity to demonstrate to the country that there is a path forward to continue to cultivate mutual trust and respect between law enforcement agencies and communities.

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# Racial and Identity Profiling Policies and Accountability

RIPA directs the Board to review and analyze "racial and identity profiling policies and practices across geographic areas in California, working in partnership with state and local law enforcement agencies."[22] In its last report, the Board surveyed all California law enforcement agencies subject to stop data reporting, seeking information on their current policies and practices relevant to racial and identity profiling, efforts to enhance law enforcement-community relations and reduce biases in policing, and policies and methods for receiving civilian complaints. As a result of the survey, the Board found while most agencies did have a specific policy or portion of a policy that addressed racial and identity profiling, there was little

Initiatives and Recommendations to Improve Policy-Community Relations in Oakland, CA, 2016.

[22] Pen. Code §13519.4, subds. (j)(3) & (A)-(E).



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consistency in what was included in those policies across those agencies that responded to the survey.[23]

In an effort to help address the observed inconsistencies, the Board has researched existing evidence-based best practices for policies devoted to preventing racial and identity profiling in policing, and has compiled its own list of best practices or standards that should be considered for inclusion by all California law enforcement agencies to help prevent and identify racial and identity profiling if and where it exists. The Board acknowledges that to fully understand how a law enforcement agency is working to identify and prevent bias and profiling if it is occurring, it will need to examine various policies relevant to the prevention of profiling in addition to policies that may be devoted solely to bias-free policing. It is also necessary to analyze the degree to which the principles of equitable treatment and provision of policing services are integrated throughout an agency's policies, culture, and practices more broadly. In the chapter below, the Board provides best practice recommendations for some of the many policies that are related to bias-free policing. These recommendations do not represent the full panoply of recommendations or best practices that an agency could and should consider adopting, rather, they aim to provide a foundation on which the Board hopes and plans to continue expanding upon in future reports.

## I. BEST PRACTICE RECOMMENDATIONS[24]

The following best practice recommendations are drawn from a range of relevant academic, governmental, and non-profit organizations that have expertise in this area. For additional information on the Board's approach to identifying best practices, please see the section devoted to best practices in the introduction.

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### 1. Agencies Should Have a Separate Policy Devoted to Racial and Identity Profiling or Bias-Free Policing That Contains Basic Principles[25]

Foundational to any bias-free policing policy should be the inclusion of a clear written policy and procedure regarding an agency's commitment to identifying and eliminating racial and identity profiling if and where it exists. Agencies should consider partnering with various stakeholders and representatives of the community in developing this policy. Some of the principles that agencies may wish to include in the policy are below.

> Agencies should create a separate policy dedicated to bias-free policing that expressly prohibits racial and identity profiling. The policy should explicitly and strongly express the agency's core values and expectations when it comes to bias-free policing.

[23] It should be noted that of the 425 law enforcement agencies in the State that were sent the survey, 114 agencies participated, and thus the responses may not be representative of all agencies in the State.

[24] Drafting note: Citations for all best practices are pending.

[25] Drafting note: Citations for all best practices are pending.

Sworn and un-sworn personnel should be directed to interact with all members of the public in a professional, impartial, fair, respectful and nondiscriminatory manner.

All members of the public and the agency should be treated equally without regard to one's personal characteristics. California state civil rights laws should be used as a guide with respect to those characteristics to be included within the policy.

Officers should be prohibited from using proxies for demographic category, including language ability, geographic location, mode of transportation or manner of dress, among others.

The policy should clearly articulate when the consideration of racial/ethnicity, disability and other demographics is inappropriate in carrying out duties and when it is legitimate policing to consider them.

## 2. Policies Covering Racial and Identity Profiling or Bias-Free Policing Should Be Easily Accessible and Well-Integrated into the Agency's Culture[26]

The policy should be accessible in many formats such as online, in person at the agency, at other governmental and non-governmental locations, and from an officer or employee, if requested.

Agencies should develop a language assistance plan and policy that includes protocols for interpretation (including Braille and American Sign Language), and should be tailored as needed to particular settings (e.g., interviews in jails or where person is otherwise in custody, interactions at police stations, interactions with officers at stops, etc.).

Bias-free policing principles should be integrated into management, policies and procedures, job descriptions, recruitment, training, personnel evaluations, resource deployment, tactics, and accountability systems.

The policy should include cross references to other relevant policies from the agency (such as civilian complaints, stops, use of force, training, etc.) and, where possible, provide links to the text of those policies.

## 3. Policies Covering Racial and Identity Profiling or Bias-Free Policing Should Have Concrete Definitions to Ensure Consistent Applications of its Principles[27]

The policy should include a robust list of definitions of key terms, protected classes and characteristics, including but not limited to:

- racial or identity profiling
- bias-free policing
- race
- color
- ethnicity
- national origin
- age
- religion

[26] Drafting note: Citations for all best practices are pending.

[27] Drafting note: Citations for all best practices are pending.



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- gender identity or expression
- sexual orientation
- mental disability
- physical disability[28]

"Racial or identity profiling" should be defined in accordance with California Penal Code 13519.4, subdivision (e), as follows:

- *"the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability in deciding which persons to subject to a stop or in deciding upon the scope or substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in a specific suspect description. The activities include, but are not limited to, traffic or pedestrian stops, or actions during a stop, such as asking questions, frisks, consensual and non-consensual searches of a person or any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest."*

**4. Policies Covering Racial and Identity Profiling or Bias-Free Policing Should Include a Component on the Limited Circumstances on When Characteristics of an Individual may be Considered**[29]

The policy should state that:

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Officers may take into account personal characteristics of an individual in establishing reasonable suspicion or probable cause, only when the characteristic is part of a specific suspect description based on trustworthy and relevant information that links a specific person to a particular unlawful incident.

Officers must be able to articulate specific facts that support their use of personal characteristics in establishing reasonable suspicion or probable cause.

Officers may consider relevant personal characteristics of an individual when determining whether to identify services designed for individuals with those characteristics (e.g., behavioral crisis, homelessness, drug use, etc.).

**5. Policies Covering Racial and Identity Profiling or Bias-Free Policing Should Include a Component on Communication with the Community**[30]

The policy should state that:

[28] The protected classes and characteristics identified here are derived from various California civil rights laws. These include the Unruh Civil Rights Act, Civil Code section 51 et seq., the Ralph Act, Civil Code section 51.7, the California Fair Employment and Housing Act, Government Code section 12920 et seq., and Government Code section 11135, among others.

[29] Drafting note: Citations for all best practices are pending.

[30] Drafting note: Citations for all best practices are pending.

All employees should treat all members of the public with courtesy, professionalism, and respect. Employees should not use harassing, intimidating, derogatory, or prejudiced language particularly when related to an individual's actual or perceived personal characteristics.

Officers should listen to the civilian's questions or concerns without interruption and then directly address the questions the person may have regarding the stop, including an explanation of options for traffic citation disposition if relevant.

When conducting stops, officers should introduce themselves to the person being stopped and provide an explanation for the stop as soon as soon as reasonable and practicable (ideally before asking the driver for his or her license and registration).

## 6. Policies Covering Racial and Identity Profiling or Bias-Free Policing Should Include a Component on Training [31]

All agency personnel, including dispatchers and non-sworn personnel should be educated on biases, both implicit and overt, and expected to manage them.

All officers should be provided with training that is adequate in quality, quantity, scope, and type on investigatory stops, searches, and arrests.

The training should be created in consultation with law enforcement experts and community members, provided on a regular basis, and consistently evaluated and updated.

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## 7. Policies Covering Racial and Identity Profiling or Bias-Free Policing Should Include a Component on Data Collection and Analysis[32]

Agencies should consider analyzing their own data collected regarding racial and identity profiling such as data collected and reported to the Department under RIPA including the stop data and civilian complaint data.

Data should be reviewed to identify exceptional and deficient conduct, trends, unexplained disparities, compliance with policy, and training needs and opportunities.

Data should be reviewed when relevant for investigating complaints of bias.

## 8. Policies Covering Racial and Identity Profiling or Bias-Free Policing Should Include a Component That Requires Accountability and Adherence to the Policy[33]

[31] Drafting note: Citations for all best practices are pending.
[32] Drafting note: Citations for all best practices are pending.
[33] Drafting note: Citations for all best practices are pending.

All agency personnel including dispatchers and non-sworn personnel are responsible for knowing and complying with the policy. Employees who engage in, ignore, or condone bias-based policing should be subject to discipline.

The policy should include information on the procedure for making and handling a bias-based policing allegation.

Officers must report instances of biased policing that they witness or are otherwise aware of. The policy should emphasize that all employees share the responsibility of preventing bias-based policing in the agency.

The policy should prohibit retaliation against any person, law enforcement or civilian, who alleges biased policing.

*Supervisory Review*[34]

Supervisory review, or the act of supervising, directing, overseeing, and review the daily activities of police officers, is essential in ensuring that the tenets of bias-free policing are integrated fully into the law enforcement agency and its culture. Below are some recommended best practices for inclusion in policies regarding supervisory review as well as some systems and technologies that may serve as necessary tools in the supervision and accountability process:

Supervisors should:

Establish and enforce the expectation that officers will police in a manner that is consistent with the U.S. and California Constitutions and federal and state laws, as well as internal policies.

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Provide leadership, counseling, direction, and support to officers as needed.

Lead efforts to engage individuals and groups and ensure that officers are working actively to engage the community and increase public trust.

Review documentation, including video from body-worn cameras as appropriate, of investigatory stops and detentions, searches, and arrests for completeness, accuracy, and adherence to law and department policy.

Take corrective action, training, or referral for discipline where appropriate.

Identify training and professional development needs and opportunities.

Highlight areas where officers are engaging appropriately and effectively and use those examples during roll call and other training opportunities.

[34] Drafting note: Citations for all best practices are pending.

[35] Early identification, warning, or risk management systems are flexible management tools that promote supervisory awareness and proactive identification of potentially problematic behavior among officers, and facilitates the delivery of individualized interventions to correct identified problematic or potentially problematic officer behavior and to prevent patterns of misconduct from emerging.

Consider the use of early identification, warning, or risk management systems[35] to contribute to effective and efficient supervisory review.

## Civilian Complaint Policies and Procedures

Civilian complaint policies and procedures, especially with regard to racial and identity profiling, are an integral piece of the Board's annual report. An analysis of civilian complaint data for inclusion in its annual report is required by RIPA.[36] California law requires that "[e]ach department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public."[37]

To meet the goals of RIPA, it is important that each law enforcement agency across the state review its civilian complaint policies to ensure that it has accessible and well-formulated contemporary complaint policies and procedures. In order to assure the public that an agency is effectively addressing civilian's concerns, law enforcement agencies should have reliable, transparent mechanisms by which to receive, investigate, and resolve complaints about alleged peace officer misconduct, particularly those involving racial or identity profiling. Both anecdotal and hard data received through civilian complaints will help law enforcement agencies identify and redress areas needing improvement.

Written and thorough civilian complaint procedures can provide a myriad of benefits to a law enforcement agency and the community at large. First, communities who feel they have been subjected to racial or identity profiling need to feel there is a fair, accessible mechanism by which their grievances can be addressed. By creating robust civilian complaint procedures, law enforcement agencies can help fortify trust with their communities.

Second, having civilian complaint procedures that are easily accessed by the community will also provide law enforcement with the opportunity to receive feedback and help root out and address potentially problematic practices within their ranks. If analysis of the complaints shows that there is an officer who is the subject of multiple sustained complaints, then he or she can be identified for training and intervention. Trends in complaints can be tracked to help shape policy within an agency. Indeed, law enforcement agencies across the country have found that civilian complaint data is important "management information." Even when complaints are not sustained, they can provide extremely useful information about performance that can be utilized to examine agency and individual officer performance, as well as obtain an understanding about the perceptions and concerns of the community.

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[35] Early identification, warning, or risk management systems are flexible management tools that promote supervisory awareness and proactive identification of potentially problematic behavior among officers, and facilitates the delivery of individualized interventions to correct identified problematic or potentially problematic officer behavior and to prevent patterns of misconduct from emerging.

[36] Pen. Code, § 13012, subd. (c).

[37] Pen. Code, § 832.5, subd. (a)(1).

Third, being receptive to civilian complaints allows law enforcement to strengthen their relationship with their communities. Distrust and resentment can evolve among communities who feel marginalized by law enforcement. To heal these divides, it is imperative that law enforcement agencies demonstrate from investigation to resolution that civilian complaints are heard, taken seriously, and pursued with professionalism and thoroughness.

This section of the report discusses the importance of effective complaint procedures in cultivating community trust, and includes: 1) an analysis of the 2016 complaint data submitted to the Department; 2) a summary of the results of a survey the Board distributed to law enforcement agencies to understand their complaint policies and procedures; and 3) provides some recommendations and best practices for agencies to consider in regards to their complaint procedures.

## I. OVERVIEW OF CIVILIAN COMPLAINT DATA REPORTED TO THE DEPARTMENT

Since 1981, state and local law enforcement agencies that employ peace officers have been submitting to the Department the number of non-criminal complaints and complaints alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category.

RIPA expanded the type of information regarding civilian complaints that is submitted to the Department. Starting on January 1, 2016, complaint information collected pursuant to Penal Code section 13012 must include the numbers of complaints alleging racial or identity profiling, including the specific type(s) of profiling alleged: based on race, color, ethnicity, national origin, religion, gender identity or expression, sexual orientation, or mental or physical disability.

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Additionally, agencies must also include the numbers of complaints that reached the dispositions of "sustained," "exonerated," "not sustained," and "unfounded." RIPA also requires the Department to disaggregate the data by individual law enforcement agency.[38]

The Department, in December 2015, released an information bulletin encouraging departments to "…explicitly inquire on their civilian complaint forms whether the complainant alleges racial or identity profiling and if so, the specific types(s) of racial or identity profiling alleged." However, law enforcement agencies may use their own discretion when developing policies and procedures for collecting information regarding complaints made against peace officers (See e.g., Pen. Code, § 832.5).

**Key Terms**

***Reported***: the number of civilian complaints reported for the statistical year

***Sustained****:* the investigation disclosed sufficient evidence to prove the truth of allegation in the complaint by preponderance of evidence

***Exonerated****:* the investigation clearly established that the actions of the personnel that formed the basis of the complaint are not a violation of law or agency policy

***Not sustained****:* the investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation in the complaint

***Unfounded****:* the investigation

[38] Cal. Pen. Code, § 13012, subd. (a)(5)(C).

Due to the discretion law enforcement agencies are given when implementing civilian complaint programs, differences in approaches between agencies could affect the number of complaints observed in the data. Therefore, care should be taken when attempting to make comparisons across agencies. Observed differences could be due to underlying differences in the way the officers of the departments interact with civilians. Differences also could be the result of other factors. For example, if Agency One makes their complaint forms available in a certain language that Agency Two does not, then Agency One's complaint form may open up the complaint process to a wider population than Agency Two's form does. As a result, Agency One may receive more complaints from civilians that only speak that language than Agency Two. In this case, differences in the number of complaints may be partially explained by the presence of a language barrier at Agency Two, but not Agency One. Other factors, such as agency policies or staffing resources within the units assigned to processing and investigating complaints, may also affect the disposition of complaints after they are reported. The Board hopes that agencies will work to implement the Board's best practice recommendations for handling civilian complaints which could increase the ability to compare complaints and complaint systems across the state.

## A. Future Civilian Complaint Data Collection Changes

The Board made a series of recommendations throughout its inaugural report, one of which had to do with the collection of civilian complaint information. Under a section entitled Recommendation for Future Data Collection Related to Civilian Complaints, the Board had the following to say.

> *Further changes to the data collection of civilian complaints may be necessary in the future to unlock the full potential of collecting this type of data… One possibility is that data reporting could be altered to address the issue of complaints reaching disposition in different years than the year in which they are first reported. As the data is currently collected, complaints that reach a disposition (sustained, exonerated, not sustained, unfounded) during a reporting year are not always complaints that were originally reported during that reporting year… Being able to differentiate complaints that stem from the reporting year from complaints that stem from previous years is preferable because these data will likely be presented with year-specific contextual and comparison data. Therefore, it may be useful to collect the data in a way that separates dispositions into two categories; number of complaints reported during the current reporting year, and number of complaints reported during a previous reporting year.*[39]

The Department took the recommendations made by the Board under consideration and has made a series of changes to the data collection form used to collect civilian complaint information from agencies across the state. An information bulletin will be released by the Department to law enforcement agencies to notify them of the new data collection requirements,

[39] Racial and Identity Profiling Advisory Board Annual Report 2018, p.34-35


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and will provide a copy of the revised data collection form[40] to assist agencies in their collection of this data.

The DOJ made changes to the civilian complaint data collection form in three ways. First, there are now specific counts of dispositions of complaints that were initially reported during the statistical year. Complaints that were originally reported in years prior to the statistical year have separate counts so that they can be distinguished from the more recent complaints.

Second, the Department now reports complaints made in local detention facilities separately from other complaints. By doing this, it will be possible to analyze complaints stemming from custodial settings separately from those stemming from non-custodial settings. This will not impact the ability to analyze all complaints as a whole, regardless of setting.

The Department made a final change in an effort to further increase the utility of the data. Non-criminal, misdemeanor and felony categories were further disaggregated by offense level for disposition and profiling category totals. By doing this, it will be possible to see the distribution of different offense levels for not only total complaints and complaints made in local detention facilities, but also specifically for complaints alleging profiling based on race/color/ethnicity/national origin, age, religion, gender identity or expression, sexual orientation, mental disability, and physical disability. This will allow the Board and members of the public to explore potential differences in the number of profiling complaints within each of the three offense levels amongst different identity types.

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These three changes in data collection are designed to make the civilian complaint information more user friendly and more accessible to the public. The changes do not alter any of the categories of information on previous collection forms. No data that was previously available on the previous data collection form has been omitted or sacrificed for any of these changes. Additionally, these changes do not require additional information to be collected by the reporting agencies. Rather, they just require a greater level of detail when reporting the data to the DOJ moving forward.

All reporting agencies will begin using the new data collection form to submit civilian complaint information to the DOJ for the calendar year 2019, to be reported to the DOJ in 2020.

## B. Overview of Data Examined

The civilian complaint data discussed in the following sections is limited to the agencies that are also subject to the stop data reporting requirements under RIPA. This includes city or county law enforcement agencies, the California Highway Patrol, and the law enforcement agencies of the University of California, California State Universities, California Community Colleges, and K-12 school districts. In total, 453 agencies subject to RIPA's stop data reporting submitted civilian complaint data for the calendar year 2017. Data for the full set of agencies that reported civilian complaint information in 2017, including agencies not subject to RIPA stop data collection (e.g.

[40] Copies of the old and new data collection forms can also be found in Appendix # of this report.


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District Attorney's Offices, Probation Departments, Coroner's Offices, and the California Employee Development Department), is available under the Civilian's Complaints Against Peace Officers section in this report.

*Civilian Complaints for Stop Data Reporters Statewide*

The 453 agencies subject to RIPA reported 9,459 civilian complaints in 2017. The most common complaints were noncriminal in nature (*n*[41] = 8,682, 91.8%), followed by complaints for conduct that constitutes a misdemeanor offense (*n* = 513, 8.4%); felony complaints were the least common (*n* = 264, 2.8%). Of the complaints that reached a disposition in the 2017 calendar year, 807 (10.2%) were sustained, 1,701 (21.4%) were not sustained, 1,897 (23.9%) were exonerated, and 3,537 (44.5%) were determined to be unfounded. As was noted in the Future Civilian Complaint Data Collection Changes section earlier in this chapter, not all complaints reach a disposition during the same year in which they were first reported. Therefore, it is likely that some of the complaints that reached disposition in 2017 were originally lodged in 2016 or years prior.

Seventy-nine (17.4%) agencies indicated they did not have any complaints to report during the year of 2017. The number of agencies that did not report having racial or identity profiling complaints to report was 312, constituting 68.9 percent of the reporting agencies subject to RIPA.

The total number of racial and identity profiling complaints from the agencies that did report one or more complaint of this type was 865. It's important to recognize that more or fewer complaints does not necessarily mean that an agency is engaging in more or less conduct of concern to community members. It may mean that an agency simply has a complaint system that is more or less accessible to and/or trusted by the public.

Of the racial and identity complaints that reached a disposition in 2017, 10 (1.5%) were sustained, 77 (11.7%) were not sustained, 96 (14.6%) were exonerated, and 476 (72.2%) were determined to be unfounded.

Figure 1 graphically breaks down profiling complaints by specific type of profiling, including race or ethnicity, nationality, physical or mental disability, sexual orientation, gender identity or expression, religion, age, and gender. It should be noted that civilians may file a complaint alleging profiling based on more than one identity type. This means that one complaint alleging multiple types of profiling may be counted multiple times across identity groups. For example, a person may file a complaint stating that they believe that they were profiled based on their nationality and religion. Therefore, numbers in Figure 1 should not be interpreted to mean the discrete number of complaints, because this would serve to over count the number of individual complaints received by the reporting agencies.

[41] "n" is the sample size.


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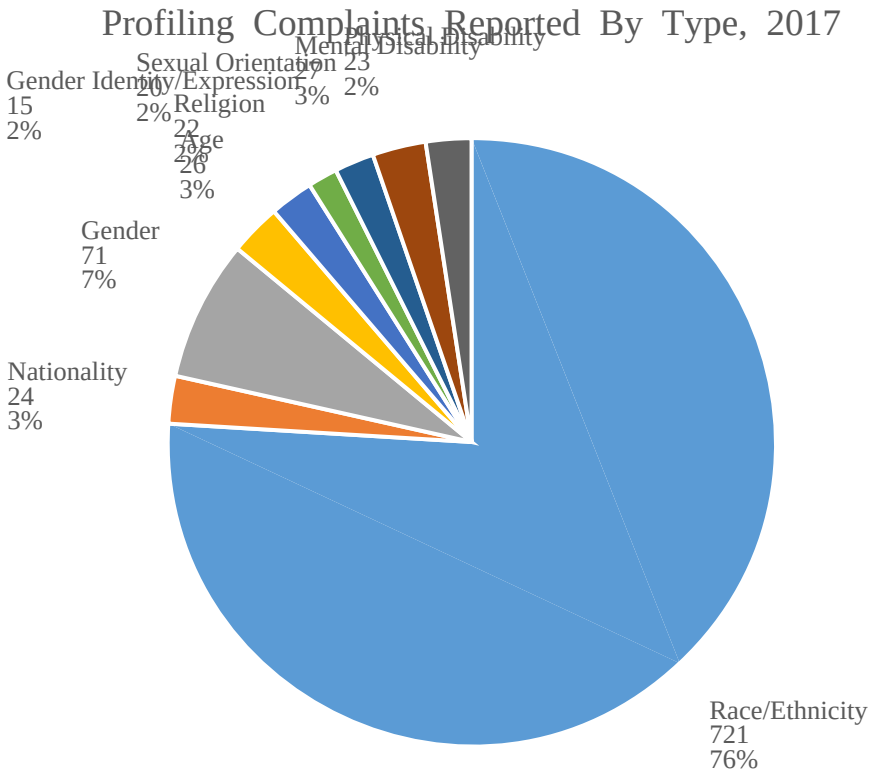
**Figure 1**




*Agency-Level Data Snapshot*

**DRAFT REPORT – PENDING EDITING AND REVIEW 11/27/2018**

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California's largest law enforcement agencies, those employing more than 999 peace officers (excluding custodial officers) (Wave 1 agencies), reported the information provided in Table 1 below, including the total number of complaints reported as well as the number of complaints reported alleging racial or identity profiling. The number of sworn personnel each agency employed in 2017 is also provided as additional information by which readers may better understand the size of each agency.

**Table 1**
*Wave 1 Agency Complaints and Sworn Personnel*

| Agency | Complaints Reported | Profiling Complaints Reported | Sworn Personnel |
|---|---|---|---|
| California Highway Patrol | 308 | 24 | 7401 |
| Los Angeles County Sheriff's Department | 828 | 31 | 9413 |
| Los Angeles Police Department | 1729 | 215 | 9988 |
| Riverside County Sheriff's Department | 78 | 7 | 1831 |
| San Bernardino County Sheriff's Department | 106 | 39 | 1957 |
| San Diego County Sheriff's Department | 6 | 1 | 2601 |
| San Diego Police Department | 97 | 13 | 1752 |
| San Francisco Police Department | 527 | 41 | 2332 |

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Table 2 displays the same information as Table 1 for California's medium – large agencies, with between 334 and 999 non-custodial sworn personnel. These agencies begin collecting stop data January 1, 2019, and are referred to as Wave 2.

**Table 2**
*Wave 2 Agency Complaints and Sworn Personnel*

| Agency | Complaints Reported | Profiling Complaints Reported | Sworn Personnel |
|---|---|---|---|
| Fresno Police Department | 188 | 7 | 786 |
| Long Beach Police Department | 168 | 12 | 799 |
| Oakland Police Department | 1248 | 54 | 744 |
| Orange County Sheriff's Department | 116 | 9 | 1843 |
| Sacramento County Sheriff's Department | 325 | 10 | 1279 |

| | | | |
|---|---|---|---|
| San Jose Police Department | 208 | 33 | 940 |

Agencies with 333 non-custodial sworn personnel belong to Wave 3. This wave of reporters begins stop data collection on January 1, 2021. Complaint and sworn personnel information for these agencies can be found in Table 3 below.

**Table 3**
*Wave 3 Agency Complaints and Sworn Personnel*

| Agency | Complaints Reported | Profiling Complaints Reported | Sworn Personnel |
|---|---|---|---|
| Alameda County Sheriff's Department | 42 | 3 | 998 |
| Anaheim Police Department | 70 | 16 | 419 |
| Bakersfield Police Department | 62 | 3 | 364 |
| Fresno County Sheriff's Department | 21 | 2 | 412 |
| Kern County Sheriff's Department | 100 | 9 | 812 |
| Riverside Police Department | 36 | 3 | 350 |
| Sacramento Police Department | 18 | 0 | 644 |
| Santa Clara County Sheriff's Department | 73 | 6 | 1264 |
| Stockton Police Department | 10 | 0 | 441 |
| Ventura County Sheriff's Department | 123 | 11 | 767 |

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Tables 1 through 3 are intended to provide a high-level glimpse at some information available for the larger agencies who employ 333 or more non-custodial sworn personnel, which will all begin collecting stop data by 2021. For a complete look at the data, the dataset containing agencies of all sizes and an extended catalogue of data elements beyond what is available in the tables above can be found at https://oag.ca.gov/ab953/ Board.

## II. BEST PRACTICE RECOMMENDATIONS[42]

The following best practice recommendations are drawn from a range of relevant academic, governmental, and non-profit organizations that have expertise in this area. For additional information on the Board's approach to identifying best practices, please see the section devoted to best practices in the introduction.

### 1. Agencies Should Have Civilian Complaint Policies and Procedures That Contain Basic Principles[43]

[42] Drafting note: Citations for all best practices are pending.
[43] Drafting note: Citations for all best practices are pending.

Agencies should have an accessible, fair, and transparent complaint process. The process should be set forth in writing and made widely and permanently available within the agency and to the public. All complaints should be accepted, whether in person, in writing, over the telephone, anonymously, or on behalf of another individual.

Agencies should develop an easily understandable and usable complaint form that individuals may use when filing a complaint for alleged officer misconduct. This form should be available online as well as in writing at a variety of governmental and community-centered locations and should be made available in multiple languages. The form should not contain any language that could reasonably be construed as discouraging the filing of a complaint.

Agencies should document and investigate all complaints of alleged officer misconduct, in a thorough, unbiased, timely manner, and as practicable. The standards for review should be clearly delineated in policies, trainings, and procedures featuring detailed examples to ensure proper application.

All complainants, subject officers, and witnesses should be treated objectively and fairly.[44]

The complaint policy should encourage individuals to come forward rather than discourage or intimidate complainants. Retaliation against any person who reports alleged misconduct or cooperates with an investigation should be expressly prohibited.

All sworn and non-sworn law enforcement agents should be sufficiently trained on the complaint policy, procedure, and requirements.

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**2. Policies on Civilian Complaints Should Be Easily Accessible and Well Communicated to the Public**[45]

Complaint procedures and forms should be available at a location within the agencies office that is easily accessible to the public which should be made available in multiple languages.[46] In addition, the procedures and complaint forms should be available online and in writing at a variety of governmental and community-centered public locations.

Officers should have complaint forms in their patrol vehicles so that complaints can be addressed immediately in the field. Agencies may consider distributing business cards with the officer's name, rank, and contact information to assist the public in lodging complaints. They may also consider requiring supervisors to respond to the field to take complaints.

The agency should contact the complainant as soon as possible with a verification that the complaint has been received and that it is being reviewed.

[44] Penal Code 148.6

[45] Drafting note: Citations for all best practices are pending.

[46] California state law requires local agencies that receive state funding to provide language access service to limited English proficient (LEP) populations. Agencies should assess which languages are most appropriate for their community and create a translation plan to ensure the forms are available in multiple languages including those for individuals with disabilities (e.g. Braille or American Sign Language).



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Reports of complaint statistics should be made available to the public on a regular basis.

**3. Any Policy on Civilian Complaints Should Contain Details on the Intake, Filing, and Tracking Process**[47]

Agencies should establish written policies and procedures for accepting, processing and investigating complaints, ensuring fairness to the subject officers and complainants.

All complaints and their dispositions should be appropriately documented and tracked, preferably electronically.

All agency personnel, including dispatcher and non-sworn personnel, should be trained to properly handle complaint intake, including how to provide complaint material and information, the consequences for failing to properly take complaints, and strategies for turning the complaint process into positive police-civilian interaction.

An agency's complaint procedures should be explained to the complainant and the complainant should be advised where and with whom the complaint may be filed.

All complaints should be given a unique number for tracking purposes.

**4. Policies on Civilian Complaints Should Contain Details on the Investigation Process**[48]

Agencies should clearly detail the investigation procedure for complaints to ensure all complaint are fully and objectively reviewed.

Any investigation should be completed by someone of higher rank than the person who is the subject of the investigation.

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All investigations should adhere to written timelines from the date the complaint was filed.

Agencies should promptly identify, collect, and consider all relevant evidence, including audio or video recordings. Agencies should not seek personal information that is not necessary to process the complaint, and which may discourage submission (e.g., social security number, driver's license information, etc.).

Take all reasonable steps to locate and interview all witnesses, including civilian witnesses. Interviews should be conducted in a timely, respectful, and unbiased manner. All agent and witness statements should be objectively evaluated.

If the complainant cannot identify the subject officer's name, all reasonable efforts to identify the officer should be made.

Agencies should accept all complaints regardless of when the alleged incident occurred. Depending upon the age and severity of the allegations, the agency may or may not need to take action, but should at minimum accept the complaint and conduct an initial review.

[47] Drafting note: Citations for all best practices are pending.
[48] Drafting note: Citations for all best practices are pending.


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Agencies should adhere to a stated time limit on how quickly the investigation process is commenced after receiving a complaint and deadlines to ensure timely resolution.

Agencies should clearly define investigation disposition categories and make this information available to the public.

The agency should regularly assess the effectiveness of the complaint process and determine if there is a need for a re-evaluation of existing policies, procedures, or trainings.

Agencies should consider the appropriateness of independent oversight models such as a civilian review Board or independent auditor.

Agencies should document all investigation findings and keep all complaints available for internal analysis and audits for at least five years.

Agencies should consider conducting regular, targeted, and random integrity audits.

## Training Related to Racial and Identity Profiling

As a part of RIPA's requirements, the Board is charged with working on training related to racial and identity profiling and analyzing the training that the Commission on Peace Officer Standards and Training (POST) has developed. POST courses include training designed to meet the requirements of the racial and cultural differences training outlined in Penal Code section 13519.4. POST is a state agency established to provide minimum testing, hiring, and training standards for peace officers in California.[49] While participation in POST is voluntary, the vast majority of California law enforcement agencies participate in the POST program, and are therefore eligible to receive the services that POST offers. Across California, there are 39 POST-certified basic law enforcement training academies that present the Regular Basic Course training to officers.

Last year's report discussed the Board's analysis of POST's training and provided recommendations for the expanded training that officers must take every five years. Specifically, the Board analyzed the following POST courses: Racial and Cultural Differences; Bias-Based Policing: Remaining Fair and Impartial; Principled Policing: Implicit Bias and Procedural Justice. The Board found that several of the trainings, particularly the since-removed Bias-Based Policing training did not meet all of the curriculum requirements under Penal Code section 13519.4.

The Board has conducted research on existing evidence-based best practices for trainings devoted to preventing racial and identity profiling in policing and compiled a list of recommendations. The Board recommends that POST consider including these practices in POST's "expanded training/refresher course" under Section 13519.4.[50] These training

[49] Pen. Code §§ 13500-13553.

[50] Pen. Code § 13519.4, subd. (a) – (h).



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recommendations apply, but are not limited, to POST trainings and are intended to promote the standardization of the practices for how law enforcement can properly and proactively address racial and identity profiling in policing and build and maintain community trust and confidence.

## I. OVERVIEW OF THE BOARD'S COLLABORATION WITH POST IN 2019

The Board and POST have maintained their collaborative relationship in an effort to fulfill the important requirements set forth in Penal Code section 13519.4. The Board and POST met and the Board provided initial feedback on POST's ongoing assessment and improvement of its procedural justice/principled policing training for law enforcement. The Board and a POST representative have discussed the following projects and ideas: 1) an 8-hour principled policing basic course to be piloted in January 2019; 2) an update and review of the existing 8-hour Principled Policing Course; 3) exploring the potential of including Curriculum Augmentation Videos (CAV) created by nationally recognized experts into trainings; 4) exploring the potential to use virtual reality or augmented reality as a training tool; 5) the potential of auditing courses to ensure curriculum and facilitation continuity statewide; and 6) researching online learning platforms to deliver the principled policing training in a cost effective manner.

Several members of the Board attended and participated in Principled Policing trainings and one member attended a three-day POST training development workshop.

## II. BEST PRACTICE RECOMMENDATIONS[51]

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The following best practice recommendations are drawn from a range of relevant academic, governmental, and non-profit organizations that have expertise in this area. For additional information on the Board's approach to identifying best practices, please see the section devoted to best practices in the introduction.

### 1. Trainings on Racial and Identity Profiling Should Incorporate Basic Principles[52]

The training should:

- Provide all agency employees with the knowledge and skills to identify bias and minimize its impact upon law enforcement activities and interactions with members of the public.
- Reflect the agency's commitment to procedural justice, bias-free policing, and community policing.
- Instill in all officers the expectation they will police diligently and have an understanding of and commitment to the rights of all individuals they encounter. The protection of civil rights as a central part of the police mission and as essential to effective policing. The requirements of the Constitution and relevant federal, state, and local laws related to equal protection and unlawful discrimination.

[51] Drafting note: Citations for all best practices are pending.

[52] Drafting note: Citations for all best practices are pending.

Cover methods, strategies, and problem solving techniques to improve public safety and prevent crime that rely upon nondiscriminatory factors, including problem-oriented policing strategies.

Provide all trainees with a sufficient understanding and definition of implicit and explicit bias and stereotyping emphasizing that all members of society frequently act on their biases. The training should present scientific peer-reviewed research on bias on its influence on behavior.

Provide officers information the existence of and how to access all health and wellness programs, physical fitness programs, stress management tools, confidential crisis counseling, or other support services available to address the heavy burdens placed on today's police officers. Research suggests that stress and having to make quick decisions under pressure can often lead to people relying on stereotypes.

Be developed in partnership with academic institutions or consultants with the requisite expertise to assist to develop and implement trainings.

Utilize adult learning approaches, including realistic scenario-based training to provide officers with opportunities to develop skills in realistic settings – learning by doing and refining understanding of policies, expectations, or concepts by applying them in the types of situations that they may come across in their day-to-day work.

Include an assessment of whether officers comprehend the material taught.

Complete and consistent training records for all trainings should be maintained for all agency employees. Agency-wide training analysis should be regularly completed and trainings should be consistently reviewed and updated.

Agencies should consider integrating a feedback loop or "check-ins" among trainees in between trainings to allow officers to reflect on and apply what they learned in the trainings to their daily lives.

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## 2. Training on Racial and Identity Profiling Should Be Well Organized and Delivered Regularly[53]

Training should be relatively short and frequently provided (for example agencies should consider offering series of two-hour trainings several times a year rather than an eight-hour training every four or five years).

Training should include members of the community who are knowledgeable about various communities and local issues, including representatives knowledgeable on issues of race, ethnicity, national origin, gender, age, religion, sexual orientation, gender identity, and disability.

Consider expanding training options to include courses on topics such as power imbalance, statistics, and methods for effective supervision.

Trainings should be evaluated for their impact on police-community relations.

## 3. Training on Racial and Identity Profiling Should Address Communication and Community Relationships[54]

[53] Drafting note: Citations for all best practices are pending.

[54] Drafting note: Citations for all best practices are pending.



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The training should:

Address the benefits of and means to achieve effective community engagement, including how to establish formal partnerships and actively engage community organizations and diverse groups within the community to form positive relationships.

Cover cultural competency, cultural awareness, and sensitivity, including the impact of historical trauma on police-community interactions, including locally relevant incidents and history should be considered for inclusion in the training.

Include effective communications skills, including how to recognize and overcome communication obstacles should be considered for inclusion.

## 4. Training on Racial and Identity Profiling Should Include the Tenets of Procedural Justice[55]

The training should:

Emphasize the importance of how people are treated during the course of an interaction as well as the outcome of that interaction.

Emphasize the core tenets of procedural justice.

- Community members should be given a voice and be allowed to tell their story and respectfully interact.
- The law must be applied equally to all members of the community, no matter what.
- Officers must show respect and demonstrate trustworthiness.

Cover various threats to procedural justice, including officer stress and poor health, as well as poor historical relations between police and communities.

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Cover various procedural, behavioral, and psychological strategies to reduce threats to procedural justice and improve police-community relations.

Feature police and community perspectives.

## 5. Training on Racial and Identity Profiling Should Cover Implicit Bias[56]

The training should:

Define implicit bias as "thoughts or feelings about people that we are unaware of and can influence our own and others' actions."

Define stereotyping.

Discuss how bias manifests in everyone, even well-intentioned people.

Discuss varied sources of implicit bias.

Present a series of empirical studies on bias in an easily understandable manner.

Discuss how bias might manifest in work and decisions.

Highlight positive strategies for mitigating bias and improving police-community relations.

[55] Drafting note: Citations for all best practices are pending.

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Discuss how to identify officers who may be manifesting bias and how to respond.
Include self-evaluation strategies for identifying bias in oneself.
Discuss how to talk openly about bias with individuals and groups.

## III. VISION FOR FUTURE REPORTS

In the coming years, the Board hopes to more comprehensively analyze POST's trainings relating to bias and profiling, and continue to work with POST on ensuring that its trainings feature the above evidence-based best practices as much as possible.

Given that effective policing requires not only appropriate training but also suitable recruitment, performance assessment, and promotion practices, the Board also plans to cover these topics in next year's report. Specific areas that may be covered by the Board include:

Methods and techniques to attract, retain, and reward diverse, highly qualified officers capable of carrying out the complicated policing mission successfully.

How to incorporate requirements regarding bias-free policing and equal protection into an agency's hiring, promotion and performance assessment processes.

The potential detrimental impact on police work, culture and policy-community relationships if an agency fails in its responsibility to hire qualified officers and employees.

How to better design hiring and promotion policies to ensure high officer morale which will foster positive interactions with the community, especially in the area of procedural justice and identifying bias.

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# Calls for Service and Bias by Proxy

In June of 2018, the Board formed a new subcommittee focused on calls for service, the formation of which was sparked by a letter sent to the Board by two state senators expressing their concern of racially-biased calls for service. Specifically, they posed the following questions for the Board to consider:

> How can our public safety systems, from dispatchers to patrol officers, better identify calls for service based on racial bias?
>
> How can police respond to protect the rights and dignity of innocent black people targeted in these incidents?
>
> How can training and policies help officers identify and resolve such a situation quickly and respectfully?
>
> What role do police play in following up with a caller to address racism that prompted an unnecessary and unjust call, how much departmental and public resources are expended in responding to calls motivated by racial bias?

In 2017, approximately 28.1 million Californians made a call to the emergency telephone service 911.[57] These calls are generally initiated by the public and relayed through 911 and divulged to the public safety personnel via a dispatcher. As it pertains to police work, once an officer is assigned a call by the dispatcher, they must respond and issue some type of finality back to the dispatcher indicating the action taken to address the call. An officer never knows what type of call they will receive from the dispatcher and must be prepared to react appropriately and fairly in all situations with very little notice. Calls for service are the most common way in which law enforcement officers initiate contact with the public and, thus analyzing these interactions, can be useful in understanding the law enforcement-community relationship.

In this report, the Board has focused on calls for service through the lens of bias by proxy. The Board will continue to analyze this important topic in future reports. The Board reviewed the varied ways in which these calls can be examined and leveraged in pursuit of the ultimate goal of addressing and eliminating racial and identity profiling in policing.

While it is a crime to make a false 911 report, it is the unfortunate truth that some calls made by the public are prejudiced (implicitly or explicitly). Given procedural requirements, dispatchers and officers, for the most part, must respond to these calls causing what is often know as bias or profiling by proxy. When the police act on a request for service rooted in racial bias or stereotyping, they risk perpetuating the caller's bias and damaging the relationship between the community and the police, and in some instances, posing particular harms to all parties involved.

Concerns about the detrimental impact of biased calls for service are not new. Nonetheless, an increasing number of high-profile instances of profiling by proxy in recent years caught on camera and widely viewed have brought questions regarding basic fairness and racial and identity discrimination when it comes to calls for service into the national spotlight. Some of the many incidents that garnered a great deal of national attention include when two black men were arrested after an employee of Starbucks in Philadelphia called 911 and reported that the men had not ordered anything; when a black graduate student was interrogated by the police after her dorm neighbor called because she was napping in the common area; and when members of a black sorority were questioned by a state trooper while performing community service picking up litter on a Pennsylvania highway.[58]

Similar high profile incidents occurred in California. This includes one incident that occurred in Rialto, California where a neighbor called the police on three black filmmakers renting an Airbnb.[59] The neighbor justified her reaction by stating that the filmmakers were suspicious because they did not wave to her. Another incident occurred in Oakland, California, where a white woman called the police on black men barbecuing in the park's designated barbecue area

[57] California Governor's Office of Emergency Services, CA 9-1-1 Emergency Communications Branch http://www.caloes.ca.gov/cal-oes-divisions/public-safety-communications/ca-9-1-1-emergency-communications-branch

[58] https://www.washingtonpost.com/national/living-while-black-viral-videos-raise-concerns-about-everyday-racial-profiling/2018/05/29/d4bd630a-5b74-11e8-8836-a4a123c359ab_story.html?utm_term=.9056692a9a78


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because they were using charcoal grill in a non-charcoal grilling spot.[60] An additional incident occurred in San Francisco, when a woman called the police on an eight-year old black girl for selling water without a permit.[61] While these incidents, among others, have shed necessary light on the persisting issues and, in some cases, incited the re-evaluation of businesses' policies and the need for additional employee training, they have also highlighted how easily a system designed to ensure the public's safety can become a proxy for discrimination and bias when misused.

## I. BIAS BY PROXY

Bias by proxy can be defined as "when an individual calls the police and makes false or ill-informed claims of misconduct about persons they dislike or are biased against."[62] The Vera Institute of Justice warns that this problem may arise when "officers rely on the emergency dispatcher's recitation of what a biased caller claims to have happened instead of making an independent and professional assessment of the caller's claims."[63] Racially motivated calls for service may stem from explicit racial profiling or implicit bias. Conflict theories assert that "when members of one community (usually the majority) feel their interests are being infringed, they will wield power to exercise control over the 'other.'"[64]

The Board does not want to discourage anyone from calling 911 in an emergency; rather raises this issue because biased or misleading information provided to 911 can lead to fatal consequences. In conducting a literature review on the issue of bias and calls for service, the Board found relatively little empirical evidence on this topic exists. The Board has noted this gap in the literature and plans to dive deeper into the various manners in which this data can be accurately collected and analyzed, particularly assessing ways in which the data collected by AB 953 can be leveraged toward this goal.

While data specifically on bias by proxy is not currently collected, agencies can begin to address this issue through recruitment, hiring, and training. [65] For example, as part of its hiring process, the Kalamazoo Police Department interview has included a hypothetical scenario that requires an applicant to discuss bias.[66] The hypothetical is: a white woman calls about a suspicious black man in a car.[67] The applicant is asked to explain how they would respond to such a call.[68] The Chief does not have a "right answer" but rather wants to see the applicant's thought process.[69] Posing a hypothetical that hones directly in on profiling by proxy is crucial in all parts of the hiring process, including dispatchers.

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[62] Fridell, *A Comprehensive Program to Produce Fair and Impartial Policing* (2017) p. 90.
[63] Thurau & Stewart, *Avoiding 'Profiling by Proxy'* (2015) Vera Institute of Justice.
[64] Lum, Does the "Race of Places" Influence Police Officer Decision Making? (2009) p. 4-5.
[65] *Supra* n. 1 at 50.
[66] *Ibid.*
[67] *Ibid*.
[68] *Ibid.*
[69] *Ibid.*

Non-profit organizations, Fair and Impartial Policing, Vera Institute of Justice[70], and ACLU[71] offer the following suggestions for how to best address the issue: [72]

Train officers and dispatchers to be aware of the potential for biased-based motivations behind calls for service.

- Officers should exhibit critical decision making, drawing on their training to assess whether there is criminal conduct.

Police officers and dispatchers should undergo anti-bias training.

Dispatchers should be trained on how to relay information without including biased assumptions and to collect enough information necessary to verify criminal activity.

For bias-motivated calls, dispatchers should be allowed to use discretion to inform caller that officer will not respond to call without legitimate basis of criminal conduct.

- If dispatchers must assign an officer, they should be allowed to inform officers of their concerns with the call for service.
- Agencies should develop policies and other materials that assist dispatchers in identifying biased calls and establish operating procedures for how biased calls should be forwarded to police.

The Police Executive Research Forum (PERF) suggests that nationwide changes to emergency communications technology will assist in identifying implicit bias by proxy.[73] New technology will allow callers to include videos, photographs, live video feed, and other relevant media to dispatchers, and dispatchers will be able to forward this information to responding officers. PERF is hopeful that allowing officers the opportunity to review relevant information before arriving on the scene will better inform their response to any given call for service, and by extension, reduce bias by proxy incidents. However, readers should be cautioned that the perceived benefits of such an updated system is speculative at this point and would require updated agency policies and empirical research to evaluate outcomes.

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## II. VISION FOR FUTURE REPORTS

For future reports, the Board plans to evaluate how to address the gap in data and empirical evidence on bias by proxy. Further, the Board plans to address what kind of training, policies, and procedures may exist for dispatchers with respect to racially motivated calls for service. The

[70] Thurau & Stewart, *Avoiding 'Profiling by Proxy'*, (2015) Vera Institute of Justice.

[71] Takei, How Police Can Stop Being Weaponized by Bias-Motivated 911 Calls, (2018) American Civil Liberties Union.

[72] Drafting note: Citations for all best practices are pending.

[73] Police Executive Research Forum, Critical Issues in Policing Series: The Revolution in Emergency Communications, (2017)

Board also hopes to review what kind of training, policies, and procedures may exist for responding officers with respect to racially motivated calls for service. Additionally, the Board hopes to review how officers are trained to handle emergencies that may require the assistance of a Critical Intervention Team, such as mental health issues, when responding to calls for service.

# Use of Force

## I. URSUS USE OF FORCE DATA

Use of force incidents occur during or after stops or attempted stops and are among the information officers are required include in RIPA stop data reports. Because of its inherent relationship to police stop and search practices, the Board decided to include a review and discussion of use of force issues in this year's report.

Assembly Bill 71 (AB 71), effective January 1, 2016, requires law enforcement agencies in California to report use of force interactions between an officer and a civilian that involve a shooting or that results in death or serious bodily injury, as defined by Government Code section 12525.2. This groundbreaking legislation is the first of its kind, making California the only state to have mandated the reporting of these types of officer uses of force. This section of the Report analyzes the data collected in 2017 and reported to the Department in 2018. Because the scope of the incidents that are reported in accordance with AB 71 is narrowly defined, these results should not be used to generalize other types of uses of force employed by law enforcement.

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### Overview of Use of Force Data Reported to the Department

The Department consulted with LEAs and stakeholders to determine what information to collect regarding use of force incidents, and issued a law enforcement bulletin in December 2015 to assist LEAs with this reporting requirement.[74]

Agencies began collecting data on January 1, 2016. LEAs enter and submit the required use of force data to the Department through the use of an online reporting platform named URSUS. All agencies employing peace officers are required to submit these data on an annual basis. The Department publishes a report and two datasets to its Open Justice public data portal each year; one dataset contains incident-level information on all cases reported to the Department, and the other contains person-level information on individuals involved in these use of force incidents.

Readers can find both datasets, as well as supporting documentation that outlines the information contained

**Key Terms**

***Serious Bodily Injury:*** a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ

***Discharge of a firearm:*** Includes any discharge of a firearm during an interaction between a civilian and an officer, regardless of whether any person was injured. A firearm is defined as a weapon that fires a shot by the force of an explosion, e.g., a handgun, rifle, shotgun, and other such device

[74] See Division of Law Enforcement Information Bulletin No. 16-12-CJIS, "Use of Force Incident Reporting," published December 2015, available at https://oag.ca.gov/sites/all/files/agweb/pdfs/law_enforcement/16-12-cjis-use-force-incident-reporting-ursus.pdf.


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within the datasets at https://openjustice.doj.ca.gov/data under the "URSUS - Use of Force" section. The Department also publishes a yearly report on this data that can be found at https://openjustice.doj.ca.gov/resources/publications under the "URSUS - Use of Force Incident Reporting" section.

*Known Limitations of Use of Force Data*

It is important to understand that although all incidents in the URSUS datasets involve use of force, not all uses of force are represented in the data. This is because only use of force incidents between an officer and civilian that involve the discharge of a firearm or result in serious bodily injury or death are reportable under AB 71. Incidents are reportable if either party of an incident, law enforcement or civilian, sustains a serious bodily injury or dies from a use of force, or if either party discharges a firearm. Use of force incidents that do not meet either of these criteria will thus not be captured in the URSUS data. Therefore, the sample of cases presented in the section below is not representative of all use of force incidents, or law enforcement-civilian encounters, that occur in California. Additionally, not every reporting agency submitted its use of force data for the 2017 calendar year to the Department by the reporting deadline.

Another limitation in analyzing use of force data submitted to the DOJ in the context of AB 953 is that the information collected for each use of force incident differs from the information collected for each stop under AB 953. Groups from the RIPA data and the URSUS data cannot be compared one to one because the information is collected and categorized in different ways. Each dataset provides useful information, but they are not comparable. URSUS data analysis is more limited in the number of identity groups that may be examined than the stop data analysis will be in the coming years. Only race, gender, age, and observed behavior indicating a civilian may have a mental disability are available in the URSUS data. AB 953, however, requires that an officer report the perceived race or ethnicity, gender, LGBT status, and age of the stopped person, as well as whether the person has limited or no English fluency and whether they have a perceived or known disability. Officers are not permitted to ask the person stopped or refer to a driver's license to obtain this information.

While AB 953 data regarding the subject of a stop is based on officers' perceptions, with the exception of perceived mental disabilities, URSUS data regarding subjects is not limited to officer perception regarding the subject. For URSUS reporting, officers are permitted to reference identification documents, search databases, and obtain self-report or third-party information in identifying a civilian's race and ethnicity, gender, and age range.

**Incidents must be reported to the DOJ under AB 71 only when:**

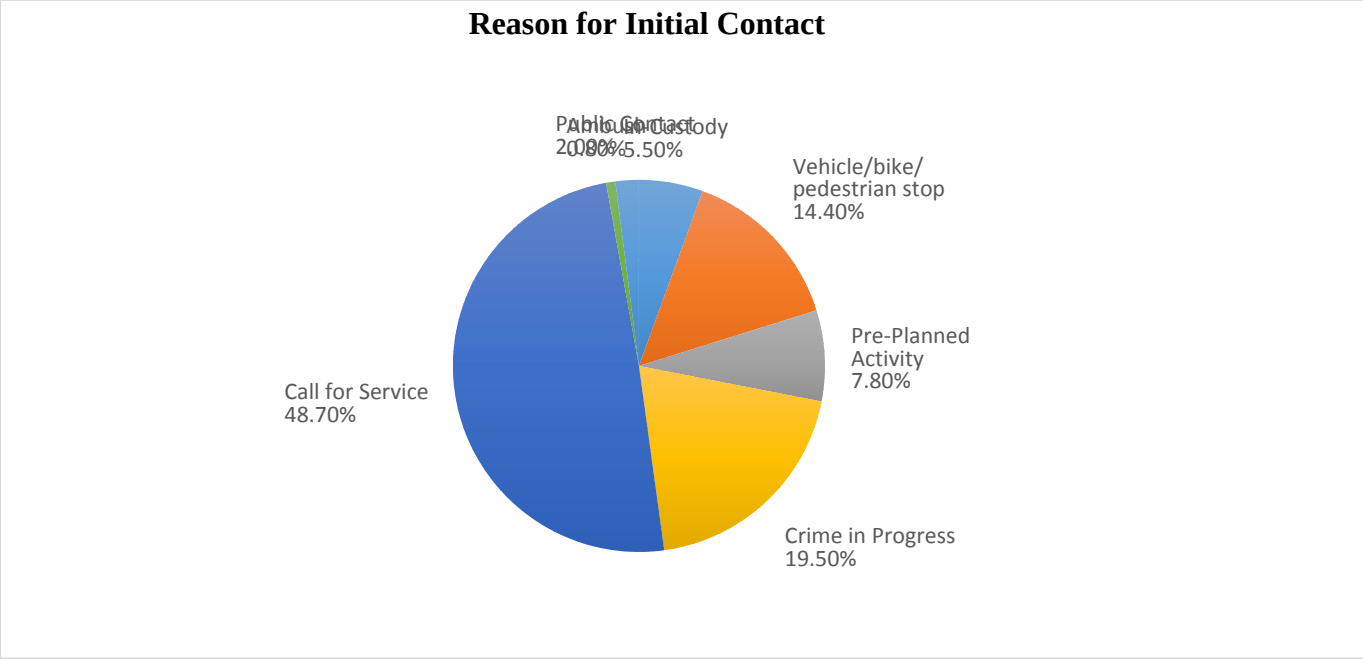
1. There is a *discharge of a firearm* by a peace officer; or
2. There is a *discharge of a firearm* by a civilian; or
3. There is a use of force by peace officer against civilian that results in *serious bodily injury or death*; or
4. There is a use of force by civilian against peace officer that results in *serious bodily injury or death*.

*Descriptive Observations*

**Incident information**

From January 1 to December 31, 2017, law enforcement agencies that employ peace officers throughout the state reported a total of 707 use of force incidents that met AB 71 criteria, i.e., they involved either the discharge of a firearm or incidents that resulted in serious bodily injury or death. Of these reported incidents, 344 (48.7%) occurred when law enforcement received a call for service, 138 (19.5%) occurred while either a crime was in progress or while officers were investigating suspicious persons or circumstances, and 102 (14.4%) resulted from a vehicle or pedestrian stop. The least common reason for contact, with six (0.8%) incidents, was an ambush without warning. Most of the incidents (*n* = 505, 71.4%) resulted in the arrest of a civilian. Figure 2 visually displays this information.

**Figure 2**




In 2017, thirty-nine incidents (5.5%), occurred after the civilian had been placed in a custodial setting. The most common stage in the custodial process for use of force incidents to occur was while the civilian had been booked and was awaiting trial, representing 38.5 percent of the cases that occurred in a custodial setting. The remaining cases that took place in a custody setting occurred during the following stages: (1) awaiting booking (17.9%), (2) booked – no charges filed (5.1%), (3) other (12.8%), (4) out to court (12.8%), (5) sentenced (12.8%).

In most instances (*n* = 674, 95.3%), one civilian was involved in the use of force incident; the highest number of civilians in a single use of force incident was three. The number of law enforcement officers involved in these incidents ranged from one (*n* = 288, 40.7%), which was the most common number of officers to be involved, to seventeen (*n* = 1, 0.1%). Roughly ninety-five percent (94.8%) of use of force incidents involved between one and five law enforcement officers, with an average of 2.31 officers (*SD* = 1.85).

## Civilian Information

A total of 741 civilians were involved in the 707 reportable use of force incidents in 2017. Of these civilians, most (*n* = 390, 52.6%) were seriously injured during the incident, with 172 (23.2%) having died, 51 (6.9%) receiving a less serious injury or injuries, 120 (16.2%) not having sustained any injury, and 8 (1.1%) having an unknown injury status due to the civilians having fled from law enforcement. Of the 741 civilians, 516 (69.6%) were reported to have assaulted an involved officer or officers. Most civilians (*n* = 487, 65.7%) were taken into custody after the use of force incident. Of those arrested, 15 (3.1%) were taken for an involuntary psychiatric hold under Welfare and Institutions Code 5150.

### *Civilian Race or Ethnicity*

The race or ethnicity of all civilians, except for those who fled and evaded law enforcement (*n* = 8, 1.1%), is captured in the URSUS use of force data. It should be noted that the URSUS data collection system allows for law enforcement agencies to classify individuals as belonging to more than one racial or ethnic group, but that these individuals (*n* = 3, 0.4%) have been coded into one group for civilians that are multiple races or ethnicities for all the analyses presented in this report. In 2017, civilians who were Hispanic (*n* = 325, 43.9%), white (*n* = 224, 30.2%) and black (*n* = 143, 19.3%) collectively accounted for more than ninety percent (93.4%) of the cases in the dataset. This being said, Asian civilians had lethal force[75] used on a higher proportion of their members (6 out of 8 individuals) than other racial and ethnic groups. Less lethal force was used on 100 percent of Asian Indian civilians, although there were only two members of this ethnicity group in the 2017 data. Readers are cautioned that, because the total number of Asian and Asian Indian civilians in the data set is very low, it is difficult to draw inferences or conclusions about use of force and these groups. For this reason, we also report on groups with larger numbers in the data set. Of the three racial groups that compose most of the civilians in the dataset, white civilians had the highest proportion of lethal force (*n* = 107, 49.3%) used on them, Hispanic civilians had the highest less lethal force (*n* = 114, 36.8%), and black civilians had the highest proportion of physical force (*n* = 66, 47.1%). All

**Key Terms**

**Lethal Force:** Discharge of firearm (hit); discharge of firearm (miss); knife, blade, or stabbing instrument
**Less Lethal Force:** Blunt / impact weapon; chemical spray (e.g. OC/CS); electronic control device; impact projectile; other dangerous weapon; civilian vehicle contact; officer vehicle contact; animal; K-9 contact
**Physical Force:** Carotid restraint control hold; other control hold/takedown; other physical contact (use of hands, fists, feet, etc.)
**Threat of Firearm:** Threat of using a firearm against another person

[75] The Key Terms box on this page displays how the use of force types in URSUS were grouped into the categories discussed in this chapter.

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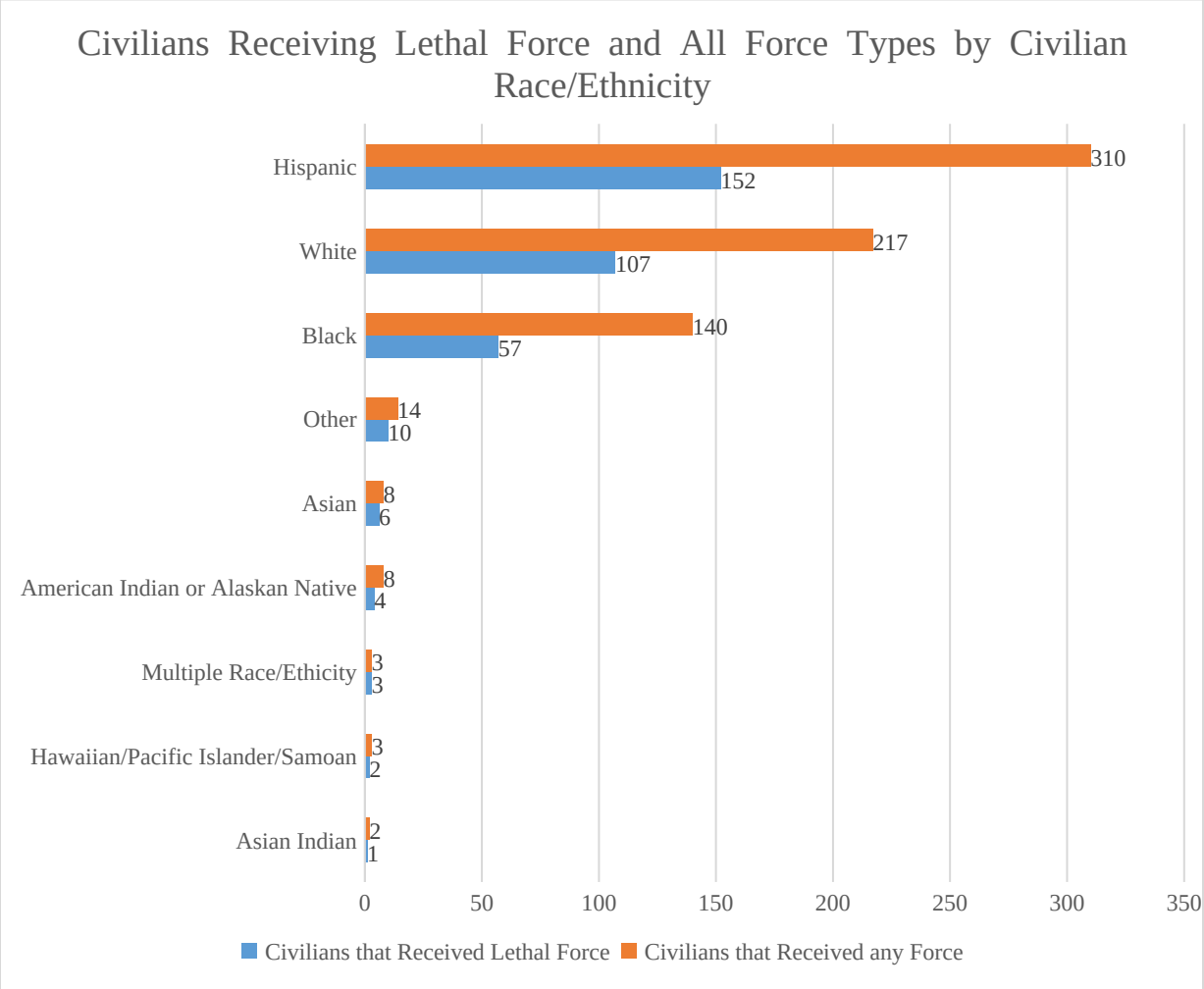
races and ethnicities had a low number of their members have a threat of a firearm reported to have be used on them. Figure 3 displays the number of civilians from each race/ethnicity group that had lethal force used on them and also how many civilians from each group had force of any type (including lethal force) used on them[76].

**Figure 3**




*Civilian Gender*

[76] Civilians in the dataset that had no force used on them are not represented in Figure 3.

More than ninety percent (*n* = 679, 91.6%) of civilians in the URSUS data were male, while the remaining 53 civilians (7.2%) were female. Female and male civilians were within two percent of each other in the proportion of cases that had less lethal force used on them and were within one percent of each other in the proportion of cases where the threat of a firearm was employed on them. Larger differences in the distribution of force type are observed between these two groups when lethal and physical force are used. The proportion of male civilians (*n* = 327) that had lethal force used on them was more than 1.5 times the proportion of female civilians (*n* = 15) that had this force type used on them, 49.9 and 30.6 percent respectively. Meanwhile, the proportion of female civilians that received physical force (*n* = 30, 61.2%) was more than 1.5 times the proportion of male civilians receiving the same type of force (*n* = 251, 38.3%).

Gender was not reported for the eight (1.1%) civilians that fled and evaded capture. In 2017, there was only one AB 71-reportable incident involving a transgender person. This person had physical and less lethal force used on them. The force types from a single case are not likely to generalize to the population as a whole, however.

*Civilian Age*

URSUS captures civilian age as a range, rather than as a distinct number. The age of civilians involved in the URSUS use of force incidents ranged from people aged 10-17 at the lower end, to a person aged 76-80 at the higher end. Nearly ninety percent (89.2%) of the civilians were fifty years old or below. The age group with the highest number of civilians that were involved in use of force incidents was the twenty-one to thirty years old group (*n* = 262, 35.4%). Twenty civilians (2.7%) were minors aged 10-17 at the time of their respective incidents.

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The civilian age groups that had the highest proportion of their members receive each type of force was as follows: 10-17 (*n* = 12, 66.7%) for lethal force, 51-60 (*n* = 29, 50%) for less lethal force, above 60 (*n* = 7, 53.8%) for physical force, and 18-20 (*n* = 2, 3.8%) for threats of a firearm. However, each of these groups only accounts for a small portion, less than three percent, of the civilians involved in the use of force incidents. Of the age groups that accounted for at least ten percent of the civilians in the 2017 data, 41-50, received the highest proportion of lethal (*n* = 58, 50.9%) and less lethal (*n* = 42, 36.8%) force, civilians aged 31-40 the highest proportion of physical force (*n* = 85, 42.7%), and civilians between 21-30 received the highest proportion of threats of a firearm (*n* = 3, 1.2%).

*Perceived Mental Disability Status*

Due to important distinctions from other identity groups in the way this data element is captured, the Board encourages readers to reference the Known Limitations section of this chapter in order to understand the way that civilians were classified for the perceived mental disability status variable. In 2017, law enforcement perceived eighty-four (11.3%) civilians involved in the reported use of force incidents to exhibit signs indicating that they had a mental disability. A higher proportion of civilians perceived to have a mental disability received force across all categories than other civilians.

## II. REVIEW OF RESEARCH ON THE EFFICACY OF USE OF FORCE POLICIES IN DECREASING DEADLY AND LESS LETHAL INCIDENTS

Research evaluating the relationship between administrative policy and use of force incidents in various police departments suggests that contemporary use of force policies that contain concrete instructions and limits on when certain force should be used correspond with a decrease in deadly and less lethal force incidents. While these studies cannot prove that the change in policy solely *caused* any fluctuation in rates of deadly and less lethal use of force incidents, several did find that the two changes were correlated.

An early study on this topic analyzed data from the New York City Police Department in 1979 found that police shootings steadily decreased after the department implemented a policy regulating shooting discretion in 1972.[77] Importantly, the study did not observe an increase in officer injury or death in conjunction with new policy changes.[78] Similar analysis of the Philadelphia Police Department's administrative policy on the use of deadly force completed in 2000 found that on-duty police shootings decreased after the department implemented restrictions that limited an officer's discretion to use deadly force in 1980. This new policy re-introduced deadly force restrictions that were in place within the department from June 1973 to December 1974. Specifically, the policy implemented in 1980 directed officers to use deadly force only in circumstances where necessary to protect human life, when no other alternative exists, to detain fleeing felons known to be in possession of a deadly weapon that they either threatened to use or have used, or to detain fleeing felons who have committed forcible felonies.[79]

Another recent analysis of the relationship between police agency policies and rates of officer-involved gun deaths found that agencies that require officers to report when an officer drew a firearm had, on average, lower rates of officer involved shooting deaths when compared to agencies that did not have this requirement.[80]

Sam Sinyangwe, a data scientist with Campaign Zero, shared his analyses on the relationship between use of force policies and observed lethal use of force with the Board at its June meeting.[81] In his review of 91 of the largest municipal police departments in the country, he found that departments that had one or more of eight specific restrictive policy elements were statistically likely to experience decreases in lethal force incidents.[82] The analysis further concluded that officers in departments with more restrictive use of force policies were statistically less likely to be killed or assaulted in the line of duty.[83] This study also demonstrated

[77] Fyfe, "Administrative Interventions on Police Shooting Discretion: An Empirical Examination" (1979) 7 J. Brim. Just. 309, reprinted in Readings on Police Use of Deadly Force, p. 277-279.

[78] *Id.* p. 279.

[79] White, Assessing the Impact of Administrative Policy on Use of Deadly Force by On- and Off-Duty Police (2000) Evaluation Review 24, 3, p. 307-314.

[80] Jennings and Rubado, Preventing the Use of Deadly Force: The Relationship between Police Agency Policies and Rates of Officer-Involved Gun Deaths (2017), pp. 217-226.

[81] Sam Sinyangwe presented to the Board in June of 2018. For additional information on this presentation, please see https://oag.ca.gov/ab953/ Board

[82] Sinyangwe (2016).

[83] Sinyangwe, pp. 9-12.


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that death or injury to officers decreased in those agencies that adopted a more defined use of force policy. The study concluded the following:

- Restrictive use of force policies are associated with fewer officer involved deaths
- Police departments with more restrictive use of force policies have fewer officer involved deaths per population[84]
- Police departments with more restrictive use of force policies have fewer officer involved deaths per 100,000 arrests.[85]
- Officers in departments with more restrictive use of force policies are less likely to die in the line of duty
- Officers in departments with more restrictive use of force policies are less likely to be assaulted in the line of duty
- Officers in departments with more restrictive use of force policies are approximately as likely to sustain an injury during an assault.[86]

A more recent 2017 assessment of the Seattle Police Department by the Seattle Police Monitor revealed a nearly 11 percent decrease in use of force incidents after the department implemented a policy with clear directives and prohibitions on certain types of force used.[87] For example, updated policy directs officers to use force that is proportional to the level of resistance provided by the citizen and to de-escalate situations whenever safe to do so.[88] This study, however, did not observe an increase in officer injury after their agency implemented new use of force policies.[89]

Studies regarding the efficacy of these more contemporary and limited use of force policies, such as the ones identified above, are an important yardstick to measure whether these contemporary policies have their intended outcome—to reduce the number of force incidents without an increase to civilian and officer injury or death. For example, the Seattle Police Monitor regularly releases reports that include longitudinal quantitative and qualitative data analysis of police practices to evaluate the effectiveness of policy changes.[90]

Accordingly, it is essential for law enforcement agencies to continue to self-evaluate and measure the effectiveness of their use of force policies. To accomplish this, agencies may consider partnering with research organizations or academic institutions to evaluate outcomes if and when agencies implement more restrictive use of force policies. This continued analysis may result in ongoing revisions to policies, more training, improvements to organizational culture, or other important interventions.

In future reports, as the Board begins to evaluate stop data reports, the Board may offer best practices recommendations related to police stops and use of force.

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[84] Relevant for departments that had four or more of the eight restrictive use of force policies. Sinyangwe (2016).

[85] Relevant for departments that had six of the eight use of force policies under review. Sinyangwe (2016).

[86] Sinyangwe, pp. 9-12.

[87] Seattle Police Monitor, Ninth Systemic Assessment: Use of Force (2017), p. 30.

[88] *Id.* p. 13-16

[89] *Id.* p. 55-56.

[90] See the Seattle Monitor's Systemic Assessment Reports. Specifically, the "Ninth Systemic Assessment: Use of Force" report is a good example of a study evaluating police use of force practices.



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# Stop Data

RIPA requires the majority of California's law enforcement agencies to collect information on all stops by their officers, excluding stops by custodial officers and those that take place in a custodial setting. A "stop" is defined as any detention or search, including consensual searches.[91]

As noted above, agencies with 1,000 or more officers began collecting data on July 1, 2018, and are required to submit this data to the Department by April 1, 2019. These agencies, the eight largest in the state, include the California Highway Patrol, Los Angeles Police Department, Los Angeles Sheriff's Office, Riverside Sheriff's Office, San Bernardino Sheriff's Office, San Diego Sheriff's Office, San Diego Police Department, and the San Francisco Police Department. In future years, the Board's annual report will include a detailed analysis of this data, once it has been submitted to the Department. Because the data will not be available to review and analyze before it publishes the 2019 report, this section will instead address:

- Data to be collected
- Methods of submitting the data to the Department
- Data integrity
- Potential methodologies to analyze stop data

The following chart provides an overview of the collection and submission process, from the time the officer collects the data and submits it to his/her agency to the time the agency submits this data to the Department:

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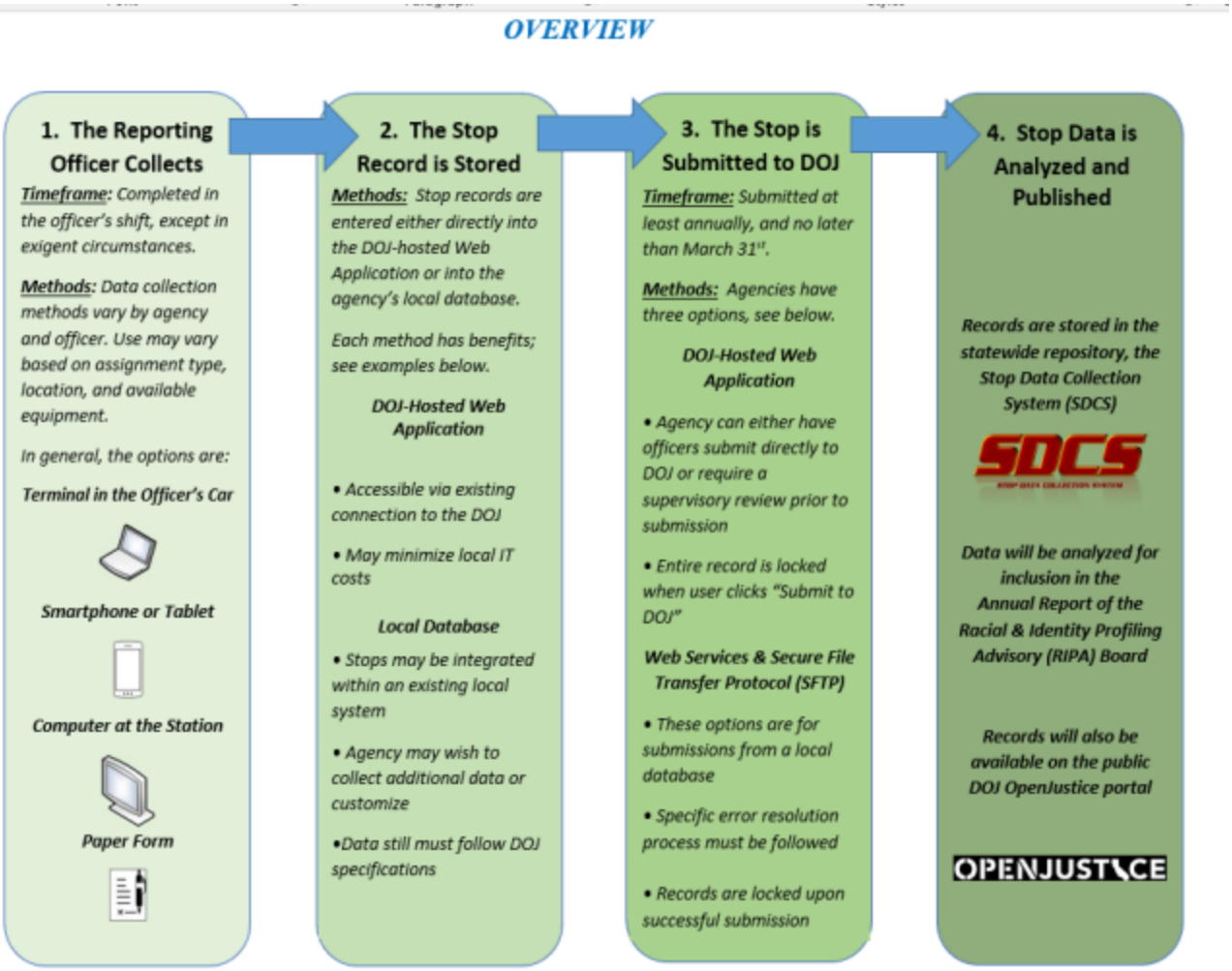
[91] Gov. Code, § 12525.5, subd. (g)(2).




# I. DATA COLLECTION

## A. Data Collected

The data collected about each stop includes three types of information: 1) information about the stop itself, 2) perceived information about the person stopped, and 3) information about the officer making the stop. Specifically, the officer must report the following[92]:

| *Information Regarding Stop* |
|---|
| 1. Date, Time, and Duration<br>2. Location |

[92] For more information on the specific data collected, including a data collection template with the data values, or choices, to select from regarding each data element, please see Appendix C. This template is also available on the Department's website at https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/regs-template.pdf.

3. Reason for Stop
4. Was Stop in Response to Call for Service?
5. Actions Taken During Stop
6. Contraband or Evidence Discovered
7. Property Seized
8. Result of Stop

***Information Regarding Officer's Perception of Person Stopped***

1. Perceived Race or Ethnicity
2. Perceived Age
3. Perceived Gender
4. Perceived to be LGBT
5. Limited or No English Fluency
6. Perceived or Known Disability

***Information Regarding Officer***

1. Officer's Identification Number
2. Years of Experience
3. Type of Assignment

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When initially recording the information about each stop - the information that becomes the stop data - officers will select from a standardized list of responses for each of the categories of information. These drop down menus ensure that the data collected is uniform for all agencies. As will be discussed later in the section, ensuring the uniformity of the data is a critical step in preserving the integrity of AB 953 data. When providing the Reason for the Stop and Basis for the Search (if one is conducted), officers are also required to complete an explanatory field (of no more than 250 characters), in which the officer explains in his/her own words why the person was stopped and/or searched.

The goal of this explanatory field is to obtain richer information about the basis for stops and searches in California. At the same time, there is a responsibility to protect the privacy of all individuals involved. Therefore, the explanation provided by the officer in these open fields must include additional detail beyond the general check boxes selected. To protect privacy, the officer is not permitted to include any personally identifying information of any individual community member or unique identifying information of any officer.[93] As an additional safeguard, it is critical to ensure privacy that officers and supervisors review the open explanatory fields to confirm that personal information is not submitted to the Department. [94]The submitting law

[93] Regulations, pp. 10 and 12, § 999.226, subds. (a)(10)(B), (a)(12)(B)(2), available at https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/stop-data-reg-final-text-110717.pdf?.

[94] AB 1518 amended the stop data collection required by RIPA, to ensure that the badge number or other unique identifying information of peace officers not be made available to the public, and provided that law


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enforcement agency is solely responsible for ensuring that no personally identifying information of any individuals, nor unique identifying information of any officer, are submitted to the Department.[95]

**B. Deadlines for Submitting Stop Data to the Department**

The size of an agency determines when it is required to begin collecting and submitting data to the Department. The collection and reporting deadlines are:

| Reporting Wave | Size of Agency | Data Collection Begins | Data Must be Reported to DOJ | Approx. # of Agencies |
|---|---|---|---|---|
| 1 | 1,000+ | July 1, 2018 | April 1, 2019 | 8 |
| 2 | 667-999 | Jan. 1, 2019 | April 1, 2020 | 7 |
| 3 | 334-666 | Jan. 1, 2021 | April 1, 2022 | 10 |
| 4 | 1-333 | Jan. 1, 2022 | April 1, 2023 | 400+ |

As noted above, agencies in the first wave of reporting began collecting data on July 1, 2018. These eight agencies are the: California Highway Patrol, Los Angeles Police Department, Los Angeles Sheriff's Office, Riverside Sheriff's Office, San Bernardino Sheriff's Office, San Diego Sheriff's Office, San Diego Police Department, and the San Francisco Police Department. Agencies are required by statute to submit data to the Department annually, but they are encouraged to submit the data on a more frequent basis if practical. The staggered deadlines allow the individual agencies and the Department to ramp up the systems to collect, store, transmit, and process such large among of data. As shown in the chart below, the number of officers required to submit stop data is expected to grow significantly over time, as more agencies begin collecting data under the deadlines set forth in the statute and illustrated above. Already, in the first year of data collection, some 20,000 law enforcement officers across the state are subject to the new stop data requirements. Figure 4 visually displays this information.

**Figure 4: Estimated Number of Officers Subject to Stop Data Reporting Requirements.[96]**

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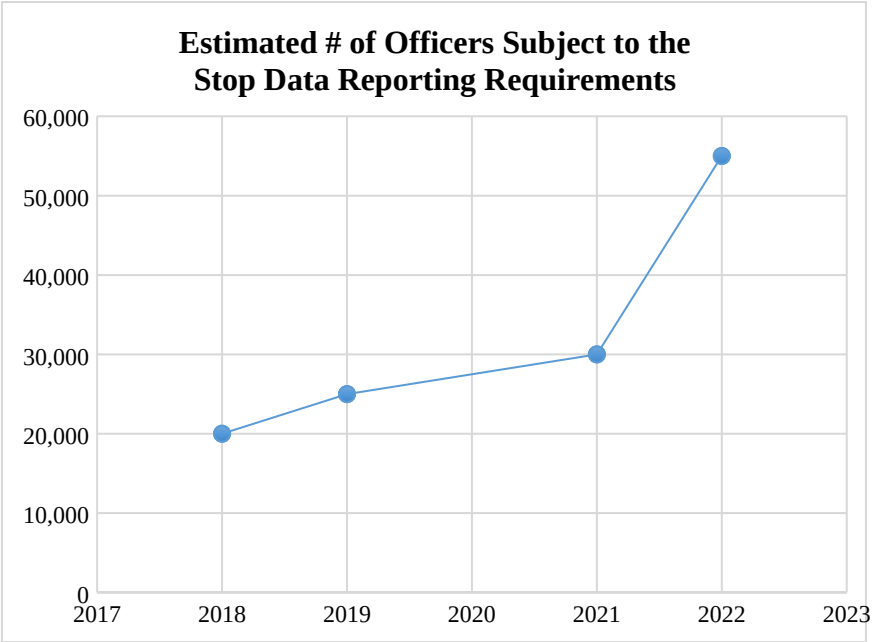
enforcement agencies are solely responsible for ensuring that personally identifying information of the individual stopped or any other information that is exempt from disclosure are not transmitted to the Department in an open text field. (Gov. Code, § 12525.2, subd. (d), as amended by AB 1518.)

[95] Cal. Gov. Code, § 12525.2, subd. (d); Regulations, p. 21, § 999.228, subd. (d).

[96] These figures are derived by adding the total number of officers subject to the reporting requirements, for each agency, as each tier of agencies begins to collect data. For example, the figure of 20,000 officers for 2018 represents the total number of officers subject to the reporting requirements from the eight agencies that began reporting on July 1, 2018.




## C. Outreach and Training

Law enforcement agencies and the California Justice Information Services Division (CJIS) of the Department have been closely collaborating to implement RIPA's stop data collection requirements. Key activities of CJIS working with reporting agencies over the last several months include:

- Site visits to each agency in Wave 1 and Wave 2
- Meetings with vendors that supply agencies with local record management systems
- Publishing technical specifications, data dictionary, and other system documents
- Regional meetings with Wave 1 and Wave 2 agencies to review and walk through technical documents
- Recurring conference calls with all Wave 1 and Wave 2 agencies
- Webinars co-hosted with the Department's Civil Rights Enforcement Section
- Submitting test records to the Department prior to launching data collection
- Creating and testing user accounts for agencies to use prior to launching data collection
- Conducting train-the-trainer sessions with Wave 1 and Wave 2 agencies on the Stop Data Collection System

Now that the largest eight agencies are actively collecting data, CJIS continues to work closely with the administrators from each of these agencies, including ongoing training as needed to

support their agency's needs. CJIS also maintains a Help Desk to provide 24/7 phone support and trouble shoot any technical issues agencies may experience as they submit their data to the statewide repository. Typical support calls may involve assisting a user to reset their password or explaining a system-generated message.

Finally, individual agencies have also taken a variety of steps to ensure the successful implementation of the new stop data collection and reporting requirements. These activities include: drafting and implementing agency policies regarding the data collection, developing administrative bulletins, conducting in-person trainings, and online tutorials.

## II. METHODS OF DATA SUBMISSION TO THE DEPARTMENT

In the spirit of facilitating the ability of a large and diverse array of individual law enforcement agencies to successfully comply with the stop data requirements, the regulations provide agencies with three methods to submit data. These three methods of submitting data to the statewide repository are: 1) a DOJ-hosted Web Application, 2) Web Services, and 3) Secure File Transfer Protocol. The Department developed these three submission methods to provide flexibility to meet the needs of an agency's local infrastructure. It is important to note that the data standards for each of these methods are the same. Each method utilized standard fields and validation checks, which will be discussed in the next section of this chapter.

The initial reporting agencies will be using the following methods:

| Agency | Type of Data Submission |
|---|---|
| California Highway Patrol | Web Services |
| Los Angeles Police Department | Secure File Transfer Protocol |
| Los Angeles Sheriff's Office | Web Services |
| Riverside Sheriff's Office | Secure File Transfer Protocol* |
| San Bernardino Sheriff's Office | Web Services |
| San Diego Police Department | Web Services* |
| San Diego Sheriff's Office | Web Services* |
| San Francisco Police Department | DOJ-hosted Web Application |

**These agencies are using a locally installed copy of an application developed by the San Diego Sheriff's Office.*

## 1. The Department's Web-Based Application

The Department developed a web-based application that agencies can use to collect and submit stop data using a computer, smart phone, tablet, or mobile data terminals (MDTs) in patrol cars. The Department developed this web-based application, in part, to ensure that smaller agencies without adequate resources would not be unduly burdened by the new stop data requirements and would be able to fully comply. With this application, officers can either input information about a stop immediately after the stop takes place or once they return to the station.

Of the Wave 1 agencies, as of November 1, 2018, the San Francisco Police Department is using the DOJ-hosted web application. The Fresno Police Department and the San Jose Police Department, which will begin collecting stop data on January 1, 2019 as part of Wave 2, also plan to use the DOJ-hosted web application.

The DOJ-hosted web application has several features that ensure the quality of the data, while making it efficient to use. To support the varying work environments and constant demands on officers, the system will save data as it is entered on the officer's device. For example, if an officer must respond to an urgent call for service and is interrupted, the record will be stored with a status of "in-progress" and can be completed later during their shift. An online Dashboard summarizes the status of each officer's stop data records, and will flag any that are incomplete so that officers are prompted to complete them.

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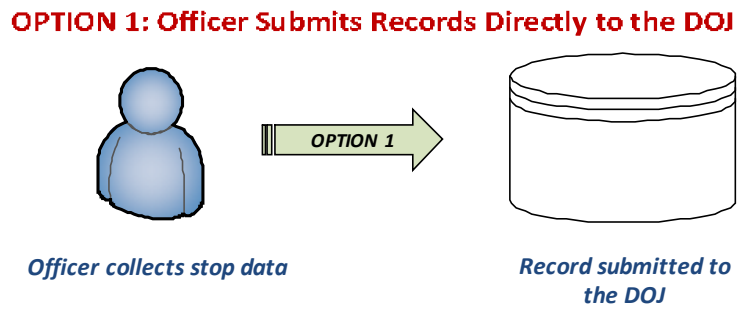
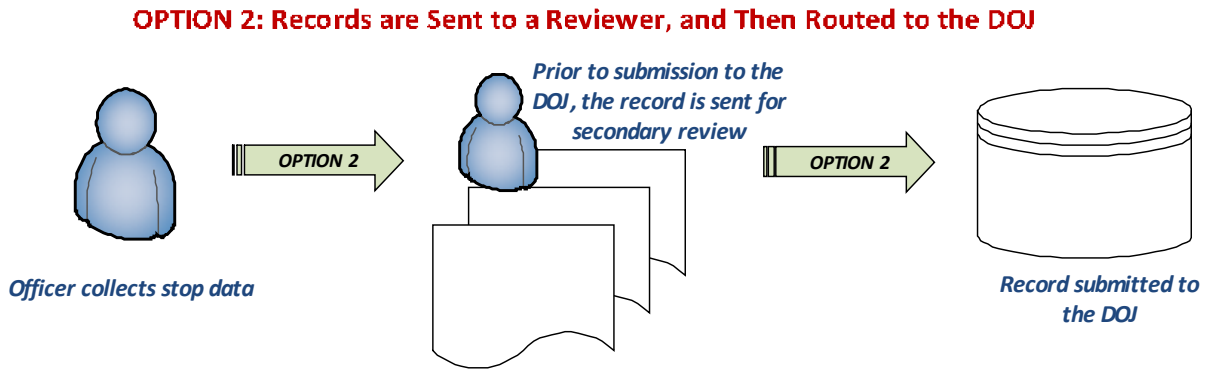
To ensure the uniformity of the data being collected, as information about a stop is being entered, any blank or invalid data fields will return immediate errors for the officer to correct. This mechanism prevents an officer from submitting incomplete or invalid entries. An officer will thus not be able to advance to the next page until he or she submits valid data, i.e., has selected one or more of the choices provided to respond to each data element and has not either left that element blank or submitted the wrong code for the element.

Agencies that use the Department's web-based application will select one of two workflows to submit their records:

> **Option 1**: Officer enters data, and submits the record immediately and directly to the Department by selecting "submit" on the application.
>
> **Option 2**: After the stop is entered by an officer, it is routed to a supervisor for review prior to submission to the Department.




***Please note*** *– In the DOJ-hosted web application, the Reviewer has limited access to the record. For example, perception data fields can not be edited. The main purpose of this feature is for the agency to ensure no personally identifying information of the person stopped or others is included in the text fields for Location, Reason for Stop and/or Basis for Search.*

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When an agency elects to use the review process (Option 2 shown above), designated administrators from the agency will review the record prior to submitting it to the Department. This helps ensure reported data is accurate, complete and does not contain any personally identifiable information of the person stopped, or other information exempt from disclosure pursuant to Government Code section 12525.5, subdivision (d). However, some fields remain locked and are not editable, even during this administrative review. Specifically, the locked fields are:

- Agency ORI Number
- Officer's Identification Number
- Date of Stop
- Time of Stop
- Perceived Race or Ethnicity of Person Stopped
- Perceived Gender of Person Stopped
- Perceived Age of Person Stopped
- Person Stopped Perceived to be LGBT
- Perceived or Known Disability of Person Stopped
- Person Stopped Has Limited or No English Fluency

The initial data fields describing the stop (Agency ORI Number, Officer's Identification Number, Date of Stop and Time of Stop) are locked because subsequent edits could circumvent the validation that protects against duplicate records. All of the fields related to an officer's perception of the person stopped are also locked since those perceptions would be specific to the reporting officer and not something that a second party could later verify or correct.
The Department's web-based application stores all records indefinitely. If the reporting agency would like to access their records, reports are available on-line, and copies of the records can be downloaded.

**2. Web Services**

Another option for data collection and submission involves a "system-to-system web service."[97] Agencies that use this method will collect their data in a local system and then submit the data to the Department. The records will be stored locally, with a copy of records transmitted to the Department.

As of November 1, 2018, the following first wave agencies are using Web Services: California Highway Patrol, Los Angeles Sheriff's Office, San Bernardino Sheriff's Office, San Diego Sheriff's Office, and San Diego Police Department.

**3. Secured File Transfer Protocol (SFTP)**

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SFTP is similar to Web Services in that agencies collect the data in a local repository and then submit that data to the Department. Agencies that select SFTP are permitted to submit batch uploads of stop data, in a number of file formats, including Excel.[98]

As of November 1, 2018, the following first wave agencies are using SFTP: Los Angeles Police Department and Riverside Sheriff's Office.

## III. DATA INTEGRITY

In order for the required collection of stop data to meet the goal of shedding light on the state of racial and identity profiling in the State of California, all stakeholders must be sure that the data is reliable and has been collected with a high degree of integrity.

Data integrity means that:

> What matters is measured (e.g., that perceived characteristics of the people stopped is recorded to be able to identify their potential role)
>
> Required information is reported accurately (e.g., that stop data records mirrors what actually happens during the police-community interactions),

[97]Regulations, p. 21, § 999.228, subd. (b).
[98]Regulations, p. 21, 999.228, subd. (b).

Each record that is submitted is complete (e.g., there is no missing information about a particular stop),

All required data is collected systematically (e.g., all stops that are subject to reporting requirements is captured)

To protect the integrity of the stop data collected under AB 953, a number of steps have been taken. Those safeguards are discussed in the following sections.

**A. Data Integrity Protocols Maintained by the Department**

All records submitted to the Department are stored in a statewide repository called the Stop Data Collection System (SDCS). A series of rules and user permissions are used by the SDCS to protect the quality and integrity of the data. At a high-level:

Reported data must be complete, and follow uniform standards
Access to stop records is restricted
A specified error resolution process must be followed
Once submitted, perception data is locked and cannot be changed by the officer or agency
Transactions are stored in system audit logs

Once an agency's records are submitted to the Department, the data can only be altered in two circumstances: (1) error validation/correction; or (2) written requests by an agency to CJIS to correct specific information on a case-by-case basis.

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*1. Automatic Error Validation/Correction*

To ensure data conforms to the requirements of RIPA and its implementing regulations, the system performs validation on every record and every field. The system automatically flags data entries that do not comply with the Department's technical specifications.

For data submitted via the DOJ-hosted Web Application, errors will be immediately detected. Error messages will be displayed on the screen for correction. Any valid data will be saved, but the record will be flagged with an incomplete status until any errors are resolved. Agency supervisors can also access online reports to help ensure incomplete records are resolved in a timely manner.

For agencies submitting data via Web Services or SFTP, error messages are also used to identify any missing or invalid data. All valid data is saved to the system, and the system will return error messages to the submitting agency. A robust error resolution process dictates whether or not update messages can be transmitted to correct errors. For example, any perception data fields are locked and cannot be subsequently edited by the agency, even if a perception data field contains an invalid code. If a correction is sent, the automated process will validate whether or not the record/field can be edited. If a change is applied to a record, a detailed audit log captures the original value and edited value.

*2. Written Requests by Agencies to Correct Data After It Has Been Submitted to the Department*

Once an agency successfully submits a record to the Department, the record is considered "locked" and the agency can no longer edit the record. If assistance is needed for a correction after the record is locked, requests must be submitted to the Department in writing. Approval is not automatic and would need to be reviewed by management on a case-by-case basis. Any records edited through this exception case would be captured in a detailed audit log to indicate the original value and edited value. As of November 1, 2018, the Department has not received any such requests.

### B. Data Integrity Protocols Maintained by Law Enforcement Agencies

The eight largest agencies in the state (i.e., the Wave 1 agencies), which are currently collecting stop data, each have in place policies and procedures to ensure that they are complying with RIPA's data collection requirements. A summary of their protocols for collecting, submitting, and ensuring the integrity of this data is set forth below.

***Snapshot of Wave 1 Agency Collection and Training Forthcoming***

## IV. POSSIBLE METHODOLOGIES FOR ANALYZING STOP DATA

Last year's report identified different methodologies that could be used to analyze the data regarding stops that is being collected by law enforcement agencies in California, to determine whether these stops reflect any underlying racial and identity bias. (See Racial and Identity Profiling Board 2018 Annual Report, Appendix B, available at https://www.oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-Board-report-2018.pdf). As noted in the report, any methodology that evaluates bias suffers from some weakness, so overreliance on one may lead to inaccurate conclusions.

Therefore, we focus on two possible methodologies we may use to analyze the data. These analyses can evaluate whether potential racial bias is present in pre-stop decisions and post-stop outcomes. Pre-stop decisions refer to an officer's decision to stop a given individual. Post-stop outcomes refer to the outcomes of a stop and, in this regard, we are concerned with whether a search conducted during a stop was successful in yielding contraband or evidence. One method analyzes the number of stops, and potentially disparate numbers for various identity groups, i.e., "pre-stop" data. This is the "Veil of Darkness" methodology.[99] The second method looks at "post-stop" data, specifically how often searches conducted during a stop were successful across identity groups and the disparity between search and search success rates. This method is the "outcome test."[100]

The stop data collected under RIPA will contain additional information outside of what is required to perform the pre-stop and post-stop tests with dedicated sections in this year's report.

[99] Grogger & Ridgeway, 2006.
[100] Knowles, Persico, &Todd, 2001.

For this reason, the Board will also include descriptive analyses to provide readers information that may not be provided using the two methodologies below. These additional types of analyses may take the form of providing the number of civilians of the various identity groups that were stopped. Additionally, these identity groups may be broken down by the proportion of their members that have certain actions (such as use of force, being handcuffed, having property seized, etc.) taken on them, or have certain outcomes (like being released with no action, being arrested without a warrant, having a parent or legal guarding contacted, etc.) to their stops. Providing these additional statistics and analyses may provide readers with more context in which to view the pre and post-stop analyses results. They could also provide more insight into post-stop outcome measures that the examinations of search hit rates does not include.

The sections below contain information on the two approaches that may constitute the largest sections of discussion of the stop data; however, they should not be interpreted to be the only forms of analysis that will be explored. Gaining an understanding of the issues the Board is tasked with examining may require the use of supplemental analysis, such as the examples listed above, or alternative methods to be employed in the future.

### A. Decision to Use Veil of Darkness and Outcome Tests

These two tests are being considered for several reasons. First, these methods are well-established in the research literature. As thoroughly employed, analyzed and critiqued methods, their strengths and weaknesses are well known and can be kept in mind when discussing their results and determining future directions. Second, as established methods, there are also a number of modifications or adjustments that can be made as needs for such become recognized. Third, their relatively simple approach makes their application and interpretation straightforward for both the Board and for members of the public and the successful replication of findings will build confidence in the RIPA Board's findings.

Finally, using these methodologies would not require collecting benchmarks manually or pairing the data with external data sources, i.e., creating a measurement by which to compare the data; this will make it feasible to apply these tests to all areas of California. Benchmarks are important in the analysis of racial bias because they reflect what behavior would be in an unbiased world.

For example, if the benchmark data suggest that two racial or identity groups are present at equal proportions, but one group constitutes the vast majority of stops, then this could indicate racial bias. A typical approach to establishing benchmarks for traffic stops, for example, would involve human observers standing at intersections and streets in order to record the number and percentage of drivers from different racial or ethnic groups that pass through by vehicle. These benchmarks would then be compared against the racial composition of individuals detained during traffic stops in those same areas.

This approach to establishing these benchmarks is time and resource intensive. Therefore, establishing similar benchmarks for the entire state would be infeasible. Benchmark data based on resident population are more readily available without manual collection. However, a significant limitation of utilizing resident population data is that civilians are often stopped in geographic areas where they do not live and, thus, are not accounted for in the population data their stops are being compared against. Additionally, the Board has been tasked with examining


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bias as it pertains not only to race and ethnicity, but also to other identity groups as well, some of which may not be represented in datasets that some studies have used as benchmark data in the past.

These limitations do not mean that rigorous studies cannot employ benchmarking comparison data. They are merely stated as insight into why the two methods discussed in the sections that follow are being considered. The following sections discuss each of the approaches in greater detail.

**B. Pre-Stop Analysis: Veil of Darkness Technique**

As noted above, one way to analyze pre-stop decisions is by using the veil of darkness (VOD) technique.[101] The VOD technique is based on the assumption that a driver's race can't be readily seen at night. The veil of darkness technique is less susceptible to issues surrounding external or manually-collected benchmarking data because it takes advantage of daylight savings changes to establish a benchmark.

Changes in daylight savings affect visibility and the ability to perceive attributes of an individual, such as their race or other identity information. The VOD technique uses changes in daylight savings and the coincident changes in visibility to evaluate bias against racial and other identity groups.[102] Since schedules do not often change immediately before or after the time change, the populations that will be present during the same period are unlikely to change. If there no bias is demonstrated, then the proportions of identity groups stopped before and after the shift in daylight shifts should be very similar. This test is intended to be a measure of bias in the decisions that officers make to initiate stops of civilians.

For the VOD test, establishing benchmarks is not necessary since the driving population immediately before and after daylight savings is likely to be the same.[103] The benchmark comes from the race-blinding effect of darkness – since it is more difficult to perceive racial identities at night. Rates of nighttime stops will then be compared to those of daylight stops, where race is more easily perceived and bias is more likely to be evident, to determine if significant differences between who is stopped under the two conditions exists.

*Application to AB 953 Stop Data*

To analyze AB 953 stop data, the preplanned analysis would consider stops made in the intertwilight period, typically sometime between 5:00PM at the earliest and 9:00PM at the latest that are also within 30 days before or after daylight savings changes. To apply the simplest version of this test, the only information that is necessary is the location, time and date of the stop, and the stopped individual's race, gender, or other identity grouping. The statistical methods often used in the VOD tests, like logistic regression, are available to not only estimate

[101] Grogger & Ridgeway, 2006.

[102] Taniguchi, Hendrix, Aagaard, Strom, Levin-Rector, & Zimmer, 2016; Worden, McLean, & Wheeler, 2012.

[103] AB 953 stop data will have unique considerations to bear in mind. The first is that pedestrian and vehicle stops are reported as one in the data. However, it may be possible to identify some vehicle stops if the reason for the stop is a vehicle-related infraction.

the discrepancies between the two, but also report the statistical uncertainty around those estimates.

*Additional Considerations and Limitations*

The change in daylight savings is intended to serve as a proxy for the visibility of a civilian's race. But, depending on ambient lighting, this may not be a completely faithful proxy in urban areas.[104] Researchers have considered ambient lighting, like proximity to streetlights, and additional contextual information to help evaluate the relative risk of being stopped.[105] However, a similar undertaking would be infeasible on a statewide scale. Additionally, this approach would be limited to the intertwilight period, and is intended for analysis of vehicle stops. Further, while the method is open to modifications to account for new considerations, in its proposed application, other relevant features like tinted windows or make or model of car, which may serve as proxy for race, cannot be accounted for because no data on these issues will be available with RIPA stop data. If the Department becomes aware of methodologies that address these limitations or better measure pre-stop decisions using these stop data, it could elect to include analyses using those methods as well in the future.

## C. Post-Stop Analysis: Outcome Tests

The outcome test, by contrast to the VOD technique, helps identify potential bias in decisions made after the stop has already been initiated. Outcome tests compare the discrepancies between the percentages of successful searches conducted on stopped individuals. These percentages are also referred to as "hit rates." For discretionary searches based upon consent, reasonable suspicion, or probable cause, equal hit rates across identity groups may signify a lack of bias, whereas differences may imply differential standards in conducting a search.[106]

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Like the VOD approach, the outcome test does not require a benchmark in order to work. This is because the comparisons being drawn are between hit rates of identity groups who are searched. The method holds that – under unbiased conditions – the hit rates of individuals would be more or less the same. If the hit rates are more or less the same, this means that officers are using a common threshold of suspicion for each racial and identity group. When the hit rates are significantly different between identity groups, this may suggest that officers are not applying the same standard to justify a search of one group compared others. For instance, a high hit rate would suggest that officers require a large amount of information that suggests to them they will find evidence or contraband, should they choose to conduct a search. Meanwhile, a low hit rate would suggest that officers require less information to justify a search. Evidence for bias exists when we can infer a low threshold to search some identity groups and higher ones for others.

This test requires researchers to identify all stops, as well as those that lead to searches, and of those searches the number of those which lead to discoveries of contraband or evidence, and their locations. With this information in hand, it is possible to use inferential statistics to determine if these differences between hit rates are due to random chance or appear more systematic, thus, evidencing possible biased practices.

[104] Horrace & Rohlin, 2016.
[105] Kalinowski, Ross & Ross, 2017.
[106] Knowles, Persico, & Todd, 2001; Persico & Todd, 2008.


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*Application to RIPA Stop Data*

In this case, research staff could look at comparisons between different racial and identity groups per location. Conventionally, comparisons are made between the majority group and the various minority groups, such as making comparisons between white and black civilians. Comparisons of how often identity groups are searched and how often those searches result in evidence or contraband being found can be made. The types of evidence and contraband that successful searches yield may also be explored using the data that will be available. Inferential statistical tests are available to estimate statistically significant differences.

*Additional Considerations and Limitations*

One disadvantage of using outcome methodology is the "inframarginality," problem, which has the potential to lead to the incorrect attribution of bias. This problem, as illustrated by Pierson, Simoiu and Overgoor (2017), can be demonstrated by imagining two identity groups (Group One and Group Two), each with two subgroups (A and B) that have different probabilities of carrying contraband, either low (A) or high (B). Imagine that Group One A has a 5% chance of holding contraband and Group One B has a 50% chance of holding contraband. Group Two A has 5% chance and Group Two B has a 75% chance of holding contraband. Suppose officers choose to search individuals if they have at least a 10% chance of finding contraband. Even though officers are applying a neutral baseline, they would end up having a lower success rate for Group One than Group Two, which could provide evidence of bias even though they are applying a search threshold without bias. For this reason, it is important to integrate enough information – like location to hedge against this, where possible (Anwar & Fang 2006; Engel 2008). Research staff will make use of the location data, to the extent possible, in order to counter this limitation. Additional tests can be pursued, as needed, in future reports.

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# Conclusion

***To Be Added***

# Appendix A: Relevant Legislation Enacted in 2018

In 2018, the State of California proposed and enacted several landmark pieces of legislation related to police accountability. Below is a summary of several relevant bills, which were enacted in 2018, and which are effective January 1, 2019.

*SB 978*[1]
This legislation requires law enforcement agencies to post their policies and procedures online.

*SB 1421*[2]
This legislation modifies California's police confidentiality laws to allow public access to records relating to firearms discharges or other serious uses of force and sustained on the job sexual assault and dishonesty by officers. Records that must be released include investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; materials compiled and presented for review to the district attorney or to any entity charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the. Released records must be redacted to remove personal data and to preserve the anonymity of complainants and witnesses. Agencies may withhold records that are the subject of an active criminal or administrative investigation.

*AB 748*[3]
This legislation establishes a standard for the release of body-worn camera footage of officer-involved shootings and other critical incidents by balancing privacy interests with the public's interest in the footage. With exceptions for protecting privacy and the integrity of pending investigations, the bill requires agencies to release footage within 45 days of an officer-involved shooting or use of force that results in death or great bodily injury.

*SB 923*[4]
This legislation requires all law enforcement agencies and prosecutorial entities to adopt regulations for conducting photo lineups and live lineups with eyewitnesses to ensure reliable and accurate suspect identifications. The bill establishes minimum required standards for conducting lineups, including recording the identification procedures.

*AB 1584*[5]
This legislation, which adds Section 625.4 to the Welfare and Institutions Code, places limits on the collection and use of voluntary DNA reference samples from minors. Among other things, the law requires written consent by the minor and approval by the minor's parent or

[1] Sen. Bill No. 978 (2017-2018 Reg. Sess.) § 1-2.
[2] Sen. Bill No. 1421 (2017-2018 Reg. Sess.) § 1-5.
[3] Assem. Bill No. 748 (2017-2018 Reg. Sess.) § 1-2.
[4] Sen. Bill No. 923 (2017-2018 Reg. Sess.) § 1-3.
[5] Assem. Bill No. 1584 (2017-2018 Reg. Sess.) § 1.

legal guardian. In addition, any agency that obtains a voluntary DNA reference sample directly from a minor shall determine within two years whether the minor remains a suspect in a criminal investigation. If the sample collected does not implicate the minor within two years, the agency is required to expunge the sample from any databases or data banks in which they have been entered. An agency shall make reasonable efforts to expunge such samples if requested by the minor, unless the sample has implicated the minor in a criminal investigation. A voluntary DNA reference sample taken from a minor shall not be searched, analyzed, or compared to other DNA samples or profiles to investigate crimes other than the investigation for which the sample was taken, unless permitted by a court order. The law provides for penalties, including attorney's fees and costs, if an agency is found by clear and convincing evidence to have maintained a practice of collecting voluntary DNA reference samples directly from a minor in violation of this section. This law is limited to the voluntary collection of DNA samples from a minor, and does not effect other laws that permit the collection or use of DNA other circumstances.

# Appendix B: Compiled Best Practice Recommendations

***To be added once all best practices from the body of the report are finalized***

# Appendix C: AB 953 Template Based on the Final Regulations

Additional data values for the stop of a student in a K-12 public school are listed in red.

**1. Originating Agency Identifier** (prepopulated field)

**2. Date, Time, and Duration of Stop**

Date: (e.g., 01/01/19)
Start Time (approx.): (e.g. 1530)
Duration of Stop (approx.): (e.g. 30 min.)

**3. Location**

Report one (listed in order of preference): block number and street name; closest intersection; highway and closest highway exit. If none of these are available, the officer may report a road marker, landmark, or other description, except cannot report street address if location is a residence.

City:_____

Check here to indicate stop is of a student at K-12 public school: _____

- Name of -12 Public School _____

**4. Perceived Race or Ethnicity of Person Stopped** (select all that apply**)**

Asian
Black/African American
Hispanic/Latino(a)
Middle Eastern or South Asian
Native American
Pacific Islander
White

**5. Perceived Gender of Person Stopped** (may select one from options 1-4 AND option 5, if applicable, or just option 5**)**

1. Male
2. Female
3. Transgender man/boy
4. Transgender woman/girl
5. Gender nonconforming

**6. Person Stopped Perceived to be LGBT (**Yes/No**) (“**Yes” must be selected if “Transgender” was selected for “Perceived Gender”)

**7. Perceived Age of Person Stopped** (input the perceived, approximate age)

**8. Person Stopped Has Limited or No English Fluency (check here if Yes____)**

**9. Perceived or Known Disability of Person Stopped** (select all that apply)

- Deafness or difficulty hearing
- Speech impairment or limited use of language
- Blind or limited vision

- Mental health condition
- Intellectual or developmental disability, including dementia
- Disability related to hyperactivity or impulsive behavior
- Other disability
- None

**10. Reason for Stop** (select one - the primary reason for the stop only)

- Traffic violation

  Specific code (CJIS offense table; select drop down) and

  Type of violation (select one)
  - Moving violation
  - Equipment violation
  - Non-moving violation, including registration violation
- Reasonable suspicion that person was engaged in criminal activity

  Specific Code (drop down; select primary if known) and

  Basis (select all applicable)
  - Officer witnessed commission of a crime
  - Matched suspect description
  - Witness or victim identification of suspect at the scene
  - Carrying suspicious object
  - Actions indicative of casing a victim or location
  - Suspected of acting as a lookout
  - Actions indicative of a drug transaction
  - Actions indicative of engaging in a violent crime
  - Other reasonable suspicion of a crime
- Known to be on parole/probation/PRCS/mandatory supervision
- Knowledge of outstanding arrest warrant/wanted person
- Investigation to determine whether person was truant
- Consensual encounter resulting in search
- Possible conduct warranting discipline under Education Code sections 48900, 48900.2, 48900.3, 48900.4, and 48900.7 (select specific Educ. Code section & subdivision)
- Determine whether student violated school policy

A brief explanation is required regarding the reason for the stop and must provide additional detail beyond the general data values selected (250-character maximum).

**11. Stop Made in Response to a Call for Service** (Yes/No) (Select "Yes" only if stop was made in response to call for service, radio call, or dispatch)

**12A. Actions Taken by Officer(s) During Stop** (select all that apply)

- Person removed from vehicle by order
- Person removed from vehicle by physical contact
- Field sobriety test conducted
- Curbside detention
- Handcuffed or flex cuffed
- Patrol car detention
- Canine removed from vehicle or used to search
- Firearm pointed at person
- Firearm discharged or used
- Electronic control device used

- o Impact projectile discharged or used (e.g. blunt impact projectile, rubber bullets or bean bags)
- o Canine bit or held person
- o Baton or other impact weapon used
- o Chemical spray used (e.g. pepper spray, mace, tear gas, or other chemical irritants)
- o Other physical or vehicle contact
- o Person photographed
- o Asked for consent to search person
  - Consent given
  - Consent not given
- o Search of person was conducted
- o Asked for consent to search property
  - Consent given
  - Consent not given
- o Search of property was conducted
- o Property was seized
- o Vehicle impound
- o Admission or written statement obtained from student
- o None

**12B. Basis for Search** (if search of person/property/both was conducted; select all that apply)

- o Consent given
- o Officer safety/safety of others
- o Search warrant
- o Condition of parole/probation/PRCS/mandatory supervision
- o Suspected weapons
- o Visible contraband
- o Odor of contraband
- o Canine detection
- o Evidence of crime
- o Incident to arrest
- o Exigent circumstances/emergency
- o Vehicle inventory (for search of property only)
- o Suspected violation of school policy

A brief explanation is required regarding the basis for the search and must provide additional detail beyond the general data values selected (250-character maximum). This field is not required if basis for search is "condition of parole/probation/PRCS/mandatory supervision."

**12C. Contraband or Evidence Discovered, if any** (during search/in plain view; select all that apply)

- o None
- o Firearm(s)
- o Ammunition
- o Weapon(s) other than a firearm
- o Drugs/narcotics
- o Alcohol
- o Money
- o Drug paraphernalia
- o Suspected stolen property
- o Cell phone(s) or electronic device(s)

- Other contraband or evidence

**12D. Basis for Property Seizure** (if property was seized; select all that apply)

- Safekeeping as allowed by law/statute
- Contraband
- Evidence
- Impound of vehicle
- Abandoned property
- Suspected violation of school policy

**Type of Property Seized** (select all that apply)

- Firearm(s)
- Ammunition
- Weapon(s) other than a firearm
- Drugs/narcotics
- Alcohol
- Money
- Drug paraphernalia
- Suspected stolen property
- Cell phone(s) or electronic device(s)
- Vehicle
- Other contraband or evidence

**13. Result of Stop** (select all that apply)

- No action
- Warning (verbal or written): Code/ordinance cited (drop down)
- Citation for infraction: Code/ordinance cited (drop down)
- In-field cite and release: Code/ordinance cited (drop down)
- Custodial arrest pursuant to outstanding warrant
- Custodial arrest without warrant: Code/ordinance cited (drop down)
- Field Interview Card completed
- Noncriminal transport or caretaking transport (including transport by officer, transport by ambulance, or transport by another agency)
- Contacted parent/legal guardian or other person responsible for the minor
- Psychiatric hold (Welfare & Inst. Code, §§ 5150, 5585.20.)
- Referred to U.S. Department of Homeland Security (e.g., ICE, CBP)
- Referral to school administrator
- Referral to school counselor or other support staff

**14. Officer's Identification (I.D.) Number** (prepopulated field)

**15. Officer's Years of Experience** (total number of years worked as a peace officer)

**16. Type of Assignment of Officer** (select one)

- Patrol, traffic enforcement, field operations
- Gang enforcement
- Compliance check (e.g. parole/PRCS/probation/mandatory supervision)
- Special events (e.g. sports, concerts, protests)
- Roadblock or DUI sobriety checkpoint
- Narcotics/vice
- Task force

- o K-12 public school, including school resource officer or school police officer
- o Investigative/detective
- o Other (manually specify type of assignment)